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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/226/2024
IA NO : GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS
ROBBS TRADERS & FINANCE PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 20th December, 2024

Appearance :
Mr. Prithu Dudhoria, Adv.
...for appellant
Mr. Subash Agarwal, Adv.
Mr. Rajarshi Chatterjee, Adv.
Mrs. Suman Sahani, Adv.
Mr. Govind Sethalia, Adv.
...for respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated October 10, 2023, passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (Tribunal) in ITA no.743/Kol./2022, for the assessment year 2012-13.

The revenue has raised the following substantial questions of law for consideration :

i) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in allowing the appeal of the assessee in respect of penalty order u/s. 271(1)(c) of the Income Tax Act, 1961 without considering the fact that there is an involvement of organized tax evasion by way of accommodation entries ?

ii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in allowing the appeal of the assessee in respect of penalty order u/s. 271(1)(c) of the Income Tax Act, 1961 without considering the fact that the assessee had indeed furnished inaccurate particulars of its income and had in the process concealed its real income which the assessee owned up only upon reopening of the assessment in order to buy peace and in such view of the matter, the assessee could no longer contend that the ingredients for attracting section 271(1)(c) were not present ?

We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant/department and Mr. Subash Agarwal, learned counsel appearing for the respondent/assessee.

The short issue which falls for consideration in this case is whether the Assessing Officer was justified in imposing penalty under Section 271(1)(c) of the Act. Learned Tribunal has examined the facts and found that the Assessing Officer did not consider the issues raised by the assessee contesting the penalty proceedings and affirmed the proposal solely on the ground that the assessee should have canvassed all those points in the assessment proceedings.

The legal position is very clear that the penalty proceedings are independent of the assessment proceedings and merely because the assessee has accepted the assessment order, cannot be a ground to affirm the proposal of the Assessing Officer to impose penalty. Thus, factually the learned Tribunal found that the Assessing Officer's conclusion was erroneous.

Thus, we find no questions of law, much less substantial questions of law, arises for consideration in this appeal.

The appeal is thus dismissed.

The stay application being IA No : GA/2/2024 is also dismissed.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)