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

ITAT/190/2023
IA NO: GA/1/2023, IA NO: GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
M/S. SRIJAN CEMENTS LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 3rd January, 2024

Appearance :
Ms. Oindrila Ghosal, Adv.
led by Mr. Amit Sharma, Adv.
…for appellant
Mr. Avra Majumder, Adv.
Mr. Samrat Das, Adv.
…for respondent

The Court : We have heard Ms. Oindrila Ghosal, learned Advocate, led by Mr. Amit Sharma, learned standing Counsel for the appellant/revenue and Mr. Avra Majumder, learned Counsel for the respondent.

There is a delay of 612 days in filing the appeal. The respondent/assessee has filed their affidavit-in-opposition vehemently opposing the application for condonation of delay. After having seen the reasons set out in the application for condonation of delay and also having taken note of the manner in which the learned Tribunal has disposed of the matter, we are of the view that the Court has to consider as to whether there is any substantial question of law arising in this appeal for consideration. Since this appeal has been filed under Section 260A of the Income Tax Act, 1961, therefore, the Court exercises the discretion and condones the delay in filing the appeal.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 5th May, 2021 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in I.T.A No.1444/Kol/2019 for the assessment year 2013-14 and I.T.A No.1541/Kol/2019 for the assessment year 2013-14.

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

i) Whether the Learned Tribunal has substantially erred in law in upholding the decision of the Learned PCIT(Appeals)-1, Kolkata and deleting the addition of Rs.2,95,35,760/- made as unexplained cash deposit whereas, the assessee had failed to produce books of account for verification, names and addresses of the parties to whom sales were made, expenses relating to sales, names and addresses of the parties from whom purchase were made etc. before the Assessing Officer for verification ?

ii) Whether the Learned Tribunal substantially erred in allowing the appeal of the assessee by deleting addition of Rs.2,06,20,200/- as unsecured loan after ignoring the facts that the lenders transferred funds as loan to the assessee after depositing cash in their respective bank accounts ?

We have heard Ms. Oindrila Ghosal, learned Advocate, led by Mr. Amit Sharma, learned standing Counsel for the appellant/revenue and Mr. Avra Majumder, learned Counsel for the respondent.

The short question involved in this appeal is whether the assessee was in a position to produce the books of accounts for verification, names and addresses of the parties to whom sales were made, expenses relating to sales, names and addresses of the parties from whom purchase were made etc. before the Assessing Officer for verification. When the matter travelled upto the learned Tribunal, it appears that a paper book was filed by the respondent/assessee and the learned Tribunal has in paragraph 6 noted briefly about the transactions which were culled out from the said documents. We find that the reasoning given by the learned Tribunal is inadequate. Admittedly, the assessee did not produce the documents before the Assessing Officer which they are bound to do and by placing a paper book before the learned Tribunal without adequate opportunity for the department to controvert or to deeply examine the nature of transaction, the learned Tribunal ought not to have allowed the appeal filed by the assessee.

Thus, we are satisfied that the order passed by the learned Tribunal calls for interference. Accordingly, the appeal is allowed.

The order passed by the learned Tribunal is set aside and the matter stands remanded back to the Assessing Officer.

The assessee is directed to produce all the books of accounts, ledgers and other documents before the Assessing Officer to prove the genuineness of the transaction and after affording an opportunity of personal hearing to the authorised representative of the assessee a fresh decision be taken by the Assessing Officer on merits and in accordance with law.

Consequently, the substantial questions of law are left open.

The stay application IA No: GA/2/2023 also stands disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)

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AR(CR)