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

ITAT/270/2023
IA NO: GA/1/2023, GA/2/2023
COMMISSIONER OF INCOME TAX EXEMPTIONS KOLKATA
VS
M/S INDIAN SUGAR MILLS ASSOCIATION

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE : 10TH January, 2024.

Appearance :
Ms. Smita Das De, Adv.
..for appellant

The Court: We have heard Smita Das De, learned standing Counsel for appellant revenue. The respondent has been served and an affidavit of service has been filed but none appears for the respondent.

There is a delay of 44 days in filing the appeal and we have perused the condone delay petition and we find sufficient causes were shown for not preferring the appeal within the period of limitation. Hence, the application is allowed and the delay in filing the appeal is condoned.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961(the Act) is directed against the order dated 25.5.2023 passed by the Income Tax Appellate Tribunal B Bench, Kolkata (the Tribunal) in ITA/480/Kol/2022 for the assessment year 2018-19.

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

a) Whether in the facts and in the circumstances of the Tribunal was justified in law to allow the assessee's appeal by deleting the adjustment made under Section 143(1) on account of denying exemption under Section 11 of the said Act amounting to Rs.3,97,02,996/- despite the fact that the statutory requirement of filing the form No. 10B on or before the filing of return of income was not fulfilled by the assessee trust?

b) Whether in the facts and in the circumstances of the Tribunal was justified in law in not taking cognizance of the fact that a speaking order was passed under Section 119(2)(b) of the said Act dated 17.08.2020 by the CIT (Exemptions) Kolkata wherein the condonation of delay in filing of Form 10B was rejected?

c) Whether in the facts and in the circumstances of the Tribunal was justified in law in not appreciating the fact that CBDT had issued Circular No. 02 of 2020 dated 03.01.2020 authorising the CIT to decide on the issue of condonation of delay in filing Form 10B for the cases in which delay occurs in submission of Form 10B within the period upto 365 days being contrary to the Circular mentioned herein?

We have heard Smita Das De, learned standing Counsel for appellant revenue.

The short question falls for consideration in the instant case is whether the Principal Commissioner of Income Tax (Appeals), NFAC was justified in allowing the appeal filed by the assessee thereby condoning the delay in filing the Form 10B of the Act. The learned Tribunal after going through the facts of the case took note of the latter circular issued by the Board in Circular No. 16 of 2022 dated 19-07-2022 issued under Section 119(2)(b) by which the powers delegated to the Principal Chief

Commissioner of Income Tax/Commissioner of Income Tax to condone the delay in filing Form 10B beyond 365 days up to 3 years from the assessment year 2018-19 or for subsequent year. Applying the said circular the learned Tribunal affirmed the order passed by the CIT (Appeals) in grounds before us in this appeal.

The revenue has not dealt with the said circular nor anything has been brought on record to show that Circular No. 16 of 2022 dated 19-07-2022 cannot be applied to the case on hand. The Commissioner of Income Tax (Exemptions) while rejecting the application for condonation of delay by order dated 17-08-2020 has referred to the Circular No. 2 of 2020 dated 3.1.2020 which admittedly gives power to condone the delay in filing Form 10B up to a period of 365 days. The CIT (Appeals), NFAC also took note of a decision of the High Court of Gujarat in *Commissioner of Income Tax Vs Gujarat Oil And Allied Industries* reported in 1993 ITR (201) 325 wherein it was held that the filing of the auditor's report along with return of income has to be treated as procedural provision and therefore, directory in nature. Thus we find that there is no error committed by the learned Tribunal in dismissing the appeal filed by the revenue.

Accordingly, the appeal is dismissed. Substantial questions of law are answered against the revenue.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)

pkd/GH.