

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

ITAT/1/2025
IA NO: GA/1/2025, GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX 13 KOLKATA
VS
CHAMPALAL OMPRAKASH

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE BIVAS PATTANAYAK
DATE : February 05, 2025.

Appearance :

Mr. Aryak Dutt, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for appellant
Mr. J P Khaitan, Sr. Adv.
Mr. Akhilesh Gupta, Adv.
Mrs. Swapna Das, Adv.
Mr. S. Das, Adv.
...for respondent

The Court :- We have heard learned Counsel on behalf of either sides.

This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 challenging the order dated 15.01.2024 passed by the learned Income Tax Appellate Tribunal "B" Bench (The Tribunal) in ITA/1168/Kol/2019 for the assessment year 2010-2011. The revenue has raised the following substantial questions of law for consideration :-

"1. Whether the learned Tribunal has committed substantial error in law by allowing appeal in view of finding of Hon'ble Madras High Court's Judgement, in M/s. Home Finders Housing Limited vs. The Income Tax Officer [W.A. No.463 of 2017], that non-compliance of procedure indicated in GKN Driveshafts [India] Ltd. [2002] 125 Taxmann 963 [SC]?"

2. Whether the learned Tribunal has committed substantial error in law by allowing the appeal of the assessee, quashing the assessment order u/s 147/143[3] of the Income Tax Act, 1961 dated 29.12.2017, by deleting the addition of Rs.2,34,61,090/- made by AO only for not disposing off the objections raised by the assessee to the reason recorded for reopening of the case, before completion of the assessment ?

3. Whether the learned Tribunal has committed substantial error in law by not going into the merit of the case, more so in the light of judgment of Hon'ble High Court at Calcutta in the case, Principal Commissioner of Income Tax -5, Kolkata versus Swati Bajaj reported in the year of 2022 where it was observed that the assessee has failed to discharge legal obligations to prove the identity, genuineness and creditworthiness of the transaction ?”

There is a delay of 191 days in filing the appeal. As the explanation offered for the delay is acceptable, the application is allowed and the delay is condoned.

The revenue is aggrieved by a common order passed by the learned Tribunal in the appeals filed by the assessee as well as the department against the order passed by the Commissioner of Income Tax - 13(Appeals) Kolkata, CIT(A) dated 19th March, 2019 by which the CIT(A) affirmed the assessment order dated 29.12.2017. Though several issues were raised before the learned Tribunal the first issue is taken up for consideration by the learned Tribunal was whether the assessing officer was right in not disposing of the written objection submitted by the assessee for reopening of the assessment. In fact, this ground was canvassed by the assessee before the CIT(A) which call for a remand report but unfortunately the assessing officer did not submit the remand report and the CIT(A) proceeded to take a decision on merits and particularly allowed the appeal of the assessee but with regard to the percentage of the

gross profit rate on the entire turnover and made a restriction thereof. The learned Tribunal, in our view, rightly took note of the decision of the Hon'ble Court in GKN Driveshafts [India] Ltd. vs. ITO [2003] 259 ITR 19 [SC]. The duty cast upon the assessing officer is to decide the written objections given by the assessee to the proposed reopening and passing a speaking order and if the order goes against the assessee, the assessee has a liberty to challenge the order by filing a writ petition as no other alternative remedy is provided under the provisions of the Income Tax Act, 1961. In the instant case, it is not in dispute that the assessing officer did not follow the procedure laid down by the Hon'ble Court in GKN Driveshafts [India] Ltd. [supra]. Therefore, the learned Tribunal was justified in allowing the assessee's appeal on the said ground. Thus, we find no ground to interfere with the impugned order. Accordingly, the appeal filed by the revenue is dismissed and the substantial question of law No. 1 is decided against the revenue and in favour of the assessee. Consequently, the three substantial questions of law are left open. The application is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(BIVAS PATTANAYAK, J.)