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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/91/2025
IA NO:GA/1/2025, GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
INFINITY INFOTECH PARKS LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 9th September, 2025

Appearance :
Mr. Prithu Dudhoria, Adv.
…for Appellant
Mr. Pratyush Jhunjhunwala, Adv.
Ms. Struti Datta, Adv.
Ms. Sakshi Singhi, Adv.
…for Respondent

The Court : This appeal has been filed by the Department under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated April 18, 2022 passed by the Income Tax Appellate Tribunal, "C" - Bench, Kolkata (the Tribunal) in ITA No.32/Kol/2022 for the assessment year 2017-18.

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

a) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law in not considering short-term capital gain of Rs.5,41,41,587/- as business profit instead of short-term capital gain ignoring that the profit was earned on leasing out* *property on long term basis and comes within the purview of **U/**s.50 of the Income Tax Act, 1961?*

b) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal is justified in law in allowing carried forward business loss with short-term capital gain for AY 2017-18 which is not allowed U/s.71 of the Income Tax Act, 1961?*

c) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law in observing that the CIT has set aside the Assessment Order to pass the order of Assessment afresh allowing the Assessing Officer a second innings without considering that the direction in the order U/s.263 was to frame Assessment Order after considering the specific observation regarding irregular adjustments of carried forward loss with short-term capital gain and there was no direction for de novo assessment?"*

We have heard Mr. Prithu Dudhoria, learned Standing Counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned Advocate appearing for the respondent/assessee.

There is a delay of 944 days in filing the appeal. The impugned order passed by the learned Tribunal is dated 18th April, 2022. The certified copy of the same was received by the Income Tax department on 18th May, 2022 and the appeal ought to have been filed not later than 14th September, 2022 but was filed on 10th April, 2025.

We have perused the affidavit filed in support of the application for condonation of delay and we find that no cogent reasons have been given except to state that the file moved from one officer to another. Delay in filing the appeal having not been properly explained, we are not persuaded to exercise any discretion in favour of the appellant/department. Apart from that, the tax effect in the instant case is Rs.1,62,62,812/-, which is well below the threshold limit. Therefore, for such reason also the revenue cannot pursue this appeal.

For the above reasons, the application for condonation of delay being IA No: GA/1/2025 stands dismissed. Consequently, the appeal is rejected.

The stay application (GA/2/2025) also stands dismissed.

The substantial questions of law raised are left open.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

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