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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/116/2025
IA NO: GA/1/2025, GA/2/2025, GA/3/2025

PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS
TANUJ PROPERTIES PRIVATE LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 14th July, 2025.

Mr. Aryak Dutt, Adv.
Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv....for appellant.

Mr. Pratyush Jhunhunwala, Adv.
Ms. Sruti Datta, Adv.
Ms. Sakshi Singhi, Adv. ...for respondent.

The Court : This appeal by the Income Tax department has been filed under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 19.2.2024 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (the Tribunal) in ITA/1045/Kol/2023 for the assessment year 2012-13.

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

"1. Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in quashing the reopening of the assessment, ignoring the ratio laid down by the Hon'ble Supreme Court in the case of (i) Phool Chand Bajranj Lal vs. ITO (1993) 203 ITR 456 (SC), (ii) Raymond Woolen Mills Ltd. vs. ITO (1999) 236 ITR 34 (SC) and (iii) Jurisdictional Hon'ble Calcutta High Court in the case of Mulchand Rampuria vs. ITO(2000) 252 ITR 758 (Cal) with stated that while

considering the validity of the commencement of reassessment proceedings, it is only necessary to determine whether there was some prima facie material or information on the basis of which the department could reopen the case ?

2. *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in quashing the reopening of the assessment, ignoring the ratio laid down in the case of Gurera Gas Cylinders Pvt. Ltd. vs. CIT (2002) 258 ITR 170 (Punjab & Haryana) that at the stage of initiation of proceedings, the sufficiency, adequacy or correctness of the reasons cannot be examined ?*
3. *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in quashing the reopening of the assessment, ignoring the ratio laid down in the case of G. Sukesh vs. Dy. CIT (2001) 252 ITR 230, wherein it was held by the Hon'ble Kerla High Court that the information at the time of issuing notice need not be complete or even accurate ?*
4. *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in quashing the reopening of the case, whereas the assessing officer after making due examination of the information received from the Investigation Wing, found that the transaction of shares in the penny stock of S. V. Electric, previously known as M/s. Nivyah Infrastructure and Telecom Services Pvt. Ltd., as not genuine, which ultimately led to generation of bogus Long Term capital Loss for the benefit to the assessee ? “*

We have heard Mr. Aryak Dutt, learned advocate assisted by Mr. Soumen Bhattacharjee, learned advocate for the appellant and Mr. Pratyush Jhunhunwalla, learned advocate for the respondent.

We have perused the affidavit filed in support of the application and we find that sufficient cause has been shown by the revenue in not preferring the appeal within the period of limitation. Therefore, the delay in filing the appeal is condoned and the application, GA/1/2025 is allowed.

GA/3/2025 has been filed by the respondent/assessee praying that they may be permitted to avail the benefit of the Direct Tax, Vivad se Viswas Scheme, 2024 (hereinafter referred to 'as the Scheme'). The delay in filing the appeal having been condoned, it is deemed that the appeal has been accepted well within the period of limitation, that is, on 31.7.2024. If that be the case, the respondent/assessee would be entitled to avail the benefit of the Scheme which was announced on 23.7.2024. In more or less identical factual situation, this court granted such a relief in the case of Principal Commissioner of Income Tax-5, Kolkata vs. Aditya Saraf (HUF), (2023) 452 ITR 87 (Cal). The operative portion of the judgment reads as follows :

“Considering the peculiar facts and circumstances of the case, we are of the view that the assessee should not be non-suited for the default committed by the revenue in nor preferring the appeal within the period of limitation. Identical issue arose for consideration before the High Court of Delhi in the case of I.A. Housing Solution Private Limited vs. Principal Commissioner of Income Tax 4 & Others in WPC No.3560 of 2022 etc. dated November 2, 2022 and the Hon'ble Division Bench by the said order allowed the writ petition and directed the revenue to accept declaration/application forms in Form 1 and 2 filed by the assessee as valid declaration/application within a time frame and accept the balance disputed amount as stipulated by them under the provisions of the Scheme.

Thus, in the light of the above, the appeal stands disposed of with a direction to the respondent to file the requisite application under the Scheme within a period of ten days from the date of receipt of the server copy of this application and such application shall be deemed to have been presented well before the last date on which the benefit of the Scheme had come to an end and the application shall be processed and the requisite forms be issued SO as to enable the respondent/assessee to pay the disputed tax in terms of the conditions contained under the Scheme. Such order shall be passed by the revenue within a period of six weeks from the date on which Forms 1 and 2 are filed by the assessee.”

Thus, following the above decision and also taking note of the legal position that the delay having been condoned in this appeal, it is deemed to have been presented well within the period of limitation. Hence, the respondent/assessee is directed to file the necessary Forms under the Scheme within a period of ten days from the date of receipt of the server copy of this order and upon such application being filed physically it is deemed that the application was presented well before the last date on which the benefit of the Scheme had come to an end and the application shall be processed and the requisite Forms to be issued so as to enable the respondent/assessee to pay the disputed tax in terms of the conditions contained under the Scheme. Such order shall be passed by the revenue within a period of six weeks from the date on which the Forms 1 and 2 are filed by the assessee.

We are informed by the learned advocate appearing for the respondent/assessee that the department has given effect to the judgment in the case of Aditya Saraf (HUF) (supra) and the application filed by the said assessee under the Scheme was processed. This submission of the respondent/assessee is placed on record.

Accordingly, the application, GA/3/2025 is allowed.

In the light of the above, the appeal stands disposed of with the above direction and the substantial questions of law suggested by the revenue are left open.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)