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

ITAT/261/2024
IA NO: GA/1/2024, GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 13, KOLKATA
VS
RAVINDRA KUMAR AGARWAL HUF

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 21st February, 2025

Appearance :
Mr. Aryak Dutt, Adv.
Mr. Prithu Dudhoria, Adv.
...for appellant
Mr. Rites Goel, Adv.
...for respondent

The Court **:** This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act), dated 14, 2023 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata (Tribunal) in I.T.A. No. 810/Kol/2023 for the assessment year 2001-02.

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

"Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was not justified in not considering the direct as well as circumstances evidence which are brought on record by the Assessing Officer to established that the Assessee had arranged an accommodation entry amounting to Rs.47,34,280/- from shell entity in the name of M/s. Ayushi Stock Broker P. Ltd. to evade legitimated tax on it ?"

We have heard Mr. Aryak Dutt, learned standing Counsel appearing for the appellant/revenue and Mr. Rites Goel, learned counsel appearing for the respondent/assessee.

There is a delay of 161 days in filing the appeal. We have perused the averments set out in the application filed under Section 5 of the Limitation Act and we find that the reasons given are acceptable. Therefore, the application IA No: GA/1/2024 is allowed and the delay is condoned.

The assessee challenged the order passed by the Commissioner of Income Tax (Appeals) [CIT(A)] under the National Faceless Appeal Centre, dated 6th June, 2023 by which the Commissioner affirmed the order passed by the Assessing Officer dated 31st December, 2008 under Section 143(3)/147/144 of the Act. The first issue which was noticed by the learned Tribunal is that the initial notice under Section 148, dated 20.3.2008, was issued by the Income Tax Officer, Ward 4(3), Agra and the assessee had raised an objection that the said Assessing Officer does not have jurisdiction as the jurisdictional Officer of the assessee is the Income Tax Officer, Ward 46(3), Kolkata. The Department does not dispute this fact and consequently the case stood transfer to the Income Tax Officer, Ward 46(3), Kolkata. However, the said Officer did not issue notice to the assessee under Section 148 of the Act, but proceeded based on the notice issued by the Income Tax Officer at Agra, who had no jurisdiction over the assessee. Apart from that the learned Tribunal has examined the factual position and found that both the Assessing Officer as well as the Commissioner (Appeals) has not discussed about the transaction before holding the transaction to be a bogus transaction.

Thus, we find that the matter is entirely factual and no question of law, much less substantial questions of law, arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay application IA No: GA/2/2024 also is dismissed.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)

SN/S.Das
AR(CR)