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

ITAT/267/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, KOLKATA
VS.
FASTNER COMMODEAL PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th January, 2025

Appearance :
Ms. Smita Das De, Adv.
Mr. Amit Sharma, Adv.
...for Appellant

The Court : This appeal has been filed by the revenue under section 260A of the Income Tax Act, 1961 (the Act) against the order dated March 7, 2024 passed by the Income Tax Appellate Tribunal, Bench "B", Kolkata (Tribunal) in ITA No.1010/Kol/2023, for the assessment year 2020-21.

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

i) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to set aside the order dated 31.07.2023 of the NFAC, Delhi and restoring the file back to Assessing Officer for consideration of the ground of appeal taken by the respondent assessee before the CIT(A)/NFAC in respect of filing of the Form 10IC without considering the CBDT's Circular No.6/2022 dated 17.03.2022 regarding condonation of delay in filing Form 10IC as per Rule 21AE ?

ii) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to direct the Assessing Officer to consider the ground by the respondent assessee taken in its appeal preferred before the NFAC, Delhi with respect to non-filing of Form 10IC on ITBA portal for availing the benefit of Section 115BAA of the said Act ?

iii) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to allow the assessee for tax computation under Section 115BAA of the said Act even in absence of Form 10IC from the assessee being the mandatory provision in the statute ?

iv) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to rely upon the decision of Hon'ble Gujrat High Court in the case of Paguthan Energy Corporation (P) Ltd. Vs. DCIT reported in 225 Taxman 70(Guj) and the judgment of the Hon'ble Delhi High Court in the case of CIT Vs. Web Commerce (India) (P) Ltd. reported in (2009) 318 ITR 135 (Delhi) which are distinguished both in fact as well as in law as the same pertain to allowability of deductions in late filing of audit report and Form 10IC is involved herein ?

We have elaborately heard Ms. Smita Das De, learned standing counsel appearing for the appellant/revenue.

The short issue which falls for consideration in this appeal is whether the assessee should be given an opportunity to file Form 10IC before the Assessing

Officer in order to claim the benefit under Section 115BAA of the Act. It is an admitted fact that the assessee did not file the Form 10IC along with the return within the extended period, as extended by the Circular issued by the Central Board of Direct Tax dated 17th March, 2022. The question would be whether filing of such form would be mandatory or directory.

Learned Tribunal considered the peculiar facts and circumstances of the case and noted the conduct of the assessee and granted leave to the assessee permitting them to file the form and restoring the matter back to the Assessing Officer to consider the report in Form 10IC and allow the relief to the assessee if the assessee fulfils all other requisite conditions as per law. In the Circular issued by the CBDT vide its order Circular No.6 of 2022, dated 17th March, 2022, the CBDT condoned the delay in filing Form 10IC relevant to the assessment year 2020-21 on fulfillment of certain conditions which are as hereunder :-

1. The return of income for AY 2020-21 has been filed on or before the due date specified under section 139(1) of the Act.
2. The assessee company has opted for taxation u/s 115BAA of the Act in (e) of “Filing Status” in “Part A-GEN” of the Form of Return of Income ITR-6 and
3. Form 10-IC is filed electronically on or before June 30, 2022 or 3 months from the end of the month in which this Circular is issued, whichever is later.

The Circular does not specifically state as to whether all three conditions have to be cumulatively complied with or the condition of the assessee can be condoned with regard to partial compliance or part compliance of the conditions in the Circular.

Be that as it may, it is not in dispute that the assessee has filed the return of income for the assessment year 2020-21 on or before the due dates specified under Section 139(1) of the Act. Equally, it is not in dispute that the assessee company has opted for taxation under Section 115BAA of the Act. This option was available to the assessee by opting the option given in filing status in Part A-GE of the form by return of income in ITR6. This conduct of the assessee will undoubtedly go to show that the assessee intended to opt to pay tax under the simplified tax regime as also accepted in the Circular issued by the Central Board. Furthermore, during the relevant period there was Covid pandemic which also led to certain other difficulties for the assessee to upload the form along with the return within the extended time thereof. That apart, the assessee has specifically stated that they had certain difficulties in uploading the form in the Income tax portal. One more aspect which the assessee pointed out is that in case of a HUF opting under the new taxation scheme under Section 115BAC, the portal requires management number of 10IE while filing the income tax return as this being a mandatory column and the assessee continue process of filing ITR without filling the same and if there was non-compliance in filing Form 10IE, the assessee would be aware of that and will submit the same but such facilities is not provided when returns are filed by companies.

The peculiar facts and circumstances would show that the error was an inadvertent procedural error and the conduct of the assessee will clearly show that they had opted for taxation under Section 115BAA of the Act.

Thus, taking note of the facts and circumstances of the case on hand, which we consider to be very peculiar, we are not inclined to interfere with the order passed by the learned Tribunal.

Accordingly, the appeal is disposed of and the matter stands restored back to the file of the Assessing Officer to permit the assessee to file the report in Form 10IC and the Assessing Officer shall consider as to what relief the assessee would be entitled to subject to the conditions that the assessee fulfils all other requisite conditions as per law.

In the result, the appeal stands disposed of with the above direction. The substantial questions of law are left open.

The stay application being IA NO: GA/2/2024 stands disposed of.

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

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)