

OD - 6

ITAT/57/2023
IA No.GA/1/2023
GA/2/2023

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF
INCOME TAX-2, KOLKATA

-Versus-

WEST BENGAL AGRO INDUSTRIES
CORPORATION LIMITED

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 31st March, 2023

Appearance :
Mr. Aryak Dutt, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for the appellant

Ms. Sarmila Das, Adv.
...for the respondent.

The Court : There is a delay of 88 days in filing the appeal.

We have heard Mr. Aryak Dutt, learned standing counsel for the Union of India and Ms. Sarmila Das, learned Advocate for the respondent and perused the affidavit filed in support of the application for condonation of delay and we find sufficient cause has been shown for not preferring the appeal within the period of limitation.

Accordingly, the application for condonation of delay (IA No.GA/1/2023) is allowed and the delay of 88 days in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated June 27, 2022 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.2426/Kol/2019 for the assessment year 2011-12.

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

(A) *Whether on the facts and circumstances of the case and in law, the Learned Tribunal has committed substantial error in law quashing the assessment Order under Section 147 read with Section 143(3) of the Income Tax Act, 1961 ?*

We have heard Mr. Aryak Dutt, learned standing counsel assisted by Mr. Soumen Bhattacharjee, learned Advocate for the appellant/revenue and Ms. Sarmila Das, learned Advocate for the respondent/assessee.

The short issue which falls for consideration is whether the Assessing Officer was justified in reopening the assessment under Section 147 of the Act. On going through the order passed by the Tribunal we find that the Tribunal has examined the facts which were noted by the Commissioner of Income Tax (Appeals) who allowed the appeal filed by the

assessee and has recorded a finding that the assessee has made full disclosure of all the transactions in the books of account which have been examined at length by the Assessing Officer during the course of original assessment proceedings, therefore, the reopening of assessment without any reference to failure on the part of the assessee to fully and truly disclose all facts regarding the items in the return of income or books, during the assessment proceeding is not justified and is in violation of proviso to Section 147 of the Act.

In our considered view, the learned Tribunal rightly noted the legal position, took note of the facts and then rendered a finding in favour of the assessee and against the revenue.

Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal. Accordingly, the appeal (ITAT/57/2023) fails and is dismissed.

Consequently, the connected application for stay (IA No.GA/2/2023) also stands closed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)