

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

ITAT/243/2022
IA No.GA/1/2022; GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX -2, KOLKATA
Vs
M/S. OVERTOP MARKETING PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd January, 2023.

Appearance :
Mr. Tilak Mitra, Adv.
..for appellant
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
...for respondent

RE: GA/1/2022

The Court:- Heard Mr. Tilak Mitra, learned Advocate for the appellant and Ms. Swapna Das, learned Advocate for the respondent.

There is a delay of 370 days in filing the appeal.

We have perused the affidavit filed in support of the condone delay petition and we find sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence, the application is allowed and the delay in filing the appeal is condoned.

ITAT/243/2022

This appeal filed by the revenue under section 260A of the Income Tax Act, 1961 [the Act] is directed against the order dated 15.3.2021 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata [Tribunal] in ITA No.686/Kol/2019 for the assessment year 2015-16. The revenue has raised the following substantial question of law for consideration :

1. WHETHER in the fact and the circumstances of the case and in law, the decision of the tribunal is erroneous in deleting the addition of Rs.4.51 crores u/s 68 of the Act and disallowance of interest of Rs.53,70,163 ignoring the factual finding of the assessing officer on dubious existence of loan creditors and genuineness of related transaction?
2. WHETHER the Learned tribunal has erred in law as well as in fact in not considering the facts brought on record by the assessing officer on physical non-existence of the companies extending loans ?
3. WHETHER learned Tribunal has erred in holding that the criteria of identify, creditworthiness and genuineness of the transaction of the loan creditors have been established on the basis of documents alone in this case?

We have heard Mr. Tilak Mitra, learned Advocate for the appellant and Ms. Swapna Das, learned Counsel for the respondent.

After elaborately hearing the learned advocates for the parties and carefully perusing the order passed by the Commissioner of Income Tax [Appeals] -2, Kolkata [CIT(A)] and that of the learned tribunal we find that the creditworthiness of the lenders of the respondent/assessee have been examined in depth the factual details have been noted and all the lenders of the respondent/assessee have directly submitted documents before the assessing officer. However, the assessing officer proceeded to hold the Company under the control of Shri Raj Kumar Kothari to be sold company only by referring to certain answers given by the selected questions. The said answers have been recorded by the said Mr. Kothari

and also specifically alleged that it was obtained under threat and coercion. In any event, both the CIT[A] as well as the tribunal had independently assessed the factual position and arrived at a decision. The CIT[A] had also noted the decision of this court in the case of CIT vs. M/s. Dataware Private Limited in ITAT/263/2011 dated 21.9.2011 and allowed the appeal filed by the assessee. The tribunal while affirming the said order has given elaborate reasons as to how the creditworthiness of the lenders have been established. Thus, we find there is no substantial question of law arising for consideration in this appeal.

Accordingly, the appeal is dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)