Serial No. OD - 5

HIGH COURT AT CALCUTTA
(ORIGINAL SIDE)

ITAT/17/2020
IA NO:GA/1/2020 (OLD NO:GA/693/2020)
GA/2/2020 (OLD NO:GA/695/2020)
(Through Video Conferencing)

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
....Appellant(s)

Through: Mr. Prabir Bhowmick, Advocate

v/s

M/s. KESORAM INDUSTRIES LTD.
. ....Respondent(s)

Through: Ms. Nilanjana Banerjee Pal, Advocate

Coram : HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE

HON'BLE MR. JUSTICE ANIRUDDHA ROY, JUDGE

O R D E R

1. Challenging order passed by the Income Tax Appellate Tribunal in I.T.A. No. 1660/Kol/2016 for assessment year 2003-04, dated 07.03.2018, the present appeal has been filed in this Court.

2. The present appeal is accompanied by an application seeking condonation of delay of 551 days in filing thereof. The following substantial question of law is sought to be raised :-

(i) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, Kolkata has erred in sustaining the order passed by the Commissioner of Income Tax (Appeals) in holding that addition of Rs.5,66,83,746/- on account of excise duty included in closing stock was not correct, ignoring the fact that the appellant had not considered excise duty in its closing stock as per provisions of section 145 of the Income Tax Act, 1961 and accounting standard prescribed ?

3. At the very outset, learned Counsel for the appellant submitted that the issue raised in the present appeal is covered by the judgment of the Hon’ble Supreme Court *Berger Paints India Ltd. v. Commissioner of Income-tax,* reported in [2004] 135 Taxman 586 (SC).

4. In view of aforesaid stand taken by the learned Counsel for the appellant no substantial question would arise in the appeal, hence, even application for condonation of delay is not required to be considered by this Court, the same is accordingly dismissed.

5. Before parting with the order we intend to observe that the department should be careful in filing the appeal where the issue is covered by any judgment of Hon’ble Supreme Court or this Court, which is not challenged before the Hon’ble Supreme Court. In that event the department may be burdened with costs.

KOLKATA
13.01.2021
GH/S.Das.

(ANIRUDDHA ROY)
JUDGE

(RAJESH BINDAL)
JUDGE