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

ITAT/71/2017
IA NO:GA/2/2017
(OLD NO. GA/681/2017)
IN THE MATTER OF :
COMMISSIONER OF INCOME TAX, (LARGE TAXPAYERS UNITS)
KOLKATA
VS
M/s. HINDUSTHAN COPPER LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S.SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATED : NOVEMBER 16, 2021.
[*Via Video Conference*]

Appearance :
Ms. Sucharita Biswas, Advocate
Mr. Asok Bhowmick, Advocate
...for the appellant
Mr. J.P.Khaitan, Sr. Advocate
Mr. S. Chunder, Advocate
Mr. Jayanta Dutta, Advocate
Mr. Biman Kr. Saha, Advocate
...for respondent

The Court :- This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act in brevity) is directed against the order dated 3rd March, 2016 passed by the Income Tax Appellate

Tribunal "C" Bench, Kolkata (Tribunal) in I.T.A. No. 1319/Kol/2017 for assessment year 2006-2007. The revenue has raised the following substantial questions of law for consideration:

(a) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, "C" Bench Kolkata erred in law in dismissed the appeal of the revenue exparte without going into the merits of the case by relying upon the judgement of Supreme Court in the Case of Office of the Postmaster vs. Living Media India Limited in Civil Appeal No.2474-2475 of 2012 (arising out of SLP(c) Nos. 7595-7596 of 2011 dated February 24, 2012?

(b) Whether the impugned order is bad, arbitrary, illegal perverse and the same is nothing but a total non-application of mind of the Income Tax Appellate Tribunal, Kolkata and the same is liable to be set aside and/or quashed?

The revenue was an appellant before the Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals)–VI(Kol)CIT(A) dated 11th December, 2012. It appears that there was no representation on behalf of the appellant/revenue before the Tribunal and the matter was proceeded ex parte. However, the Tribunal noted that Revenue has filed a petition for an adjournment vide petition dated 2nd March, 2016. The prayer for adjournment was opposed by the assessee on the ground that the appeal was of the year 2013. The Tribunal did not accede to the prayer for grant of adjournment but proceeded to consider the matter and it took note of the fact that there was a delay of 63 days in filing the appeal. The reasons set out by the Revenue seeking condonation of delay was perused and the Tribunal opined that the reasons are not bona fide and referred to the decision of the Hon'ble Supreme Court in the case of (*OFFICE OF THE POST MASTER vs. LIVING MEDIA INDIA LIMITED)* in 348 ITR P.7 and dismissed the appeal. Aggrieved by the same the Revenue is before us by way of this appeal. It may be true that the delay in filing the appeal before the Tribunal was not explained to the satisfaction of the Tribunal. Nevertheless, when the Revenue sought for adjournment not only in the subject appeal but in seven other appeals, the Tribunal could have given short accommodation by adjourning the matter by a week or so, so that the Revenue will have an opportunity to put forth the contentions on merits. The Revenue does not benefit by lodging an appeal belatedly and more particularly when the appeal is delayed only by 63 days. Normally Court exercise discretion and condone the delay since disposal of the matter on merits will meet the ends of justice rather than throwing out a matter on a technicality. At the same time, we observe that the Revenue should have been more vigilant in pursing the matter before the Tribunal especially when the appeal is of the year 2013 and the matter came up for disposal before the Tribunal after three years in the year 2016. Be that as it may, we are of the view that a decision on merits will not only meet the ends of justice but also would be beneficial to the interest of the assessee. Therefore, we are of the view that the appeal filed by the Tribunal is required to be decided on merits. In the result, the appeal is allowed and the order passed by the Tribunal is set aside and the delay in filing the appeal before Tribunal is condoned and the Registry of the Tribunal is directed to take the appeal and decide the same on merits and in accordance with law. We make it clear that Revenue should co-operate with the disposal of the appeal before the Tribunal and shall not seek for any adjournment. Consequently, the substantial questions of law are left open.

Accordingly, the appeal stands disposed of so also the connected applications.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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