Serial No. OD-4

HIGH COURT AT CALCUTTA
(Original Side)

ITAT No.101 of 2017
IA No.GA 2/2017
(Old No.GA 851/2017)
(Through Video Conferencing)

COMMISSIONER OF INCOME TAX (LARGE TAX PAYER UNITS), KOLKATA
… .Appellant(s)

Through : Mr. Smarajit Roychowdhury,
Mr. Soumen Bhattacharjee,Advocate

v/s

M/s. HINDUSTHAN COPPER LTD.
….Respondent(s)

Through : Mr. J.P. Khaitan, Sr. Advocate
Mr. Sourav Chundar, Advocate (VC)
Mr. Biman Kumar Saha,
Mr.Jayanta Dutta, Advocates

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

HON'BLE MR. JUSTICE ANIRUDDHA ROY, JUDGE

O R D E R

1. Challenge in the present appeal filed by the Revenue has been made to the order dated August 06, 2015 passed by the Income Tax Appellate Tribunal, (for short Tribunal) "B" Bench, Kolkata in I.T.A. Nos.822 to 824/Kol/2012 for the Assessment Year 2002-03 to 2004-05 respectively and I.T.A. NO.893/Kol/2012 for the Assessment Year 2008-09. The following substantial questions of law have been raised:-

(a) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, "B" Bench Kolkata erred in law in by not condoning the delay of 32 days in filing the appeal before the Income Tax Appellate Tribunal by treating the same as inordinate delay relying on the Supreme Court decision in the case of office of Post Master Vs. Living India Media Limited in Civil Appeal Case No.2474-2475 of 2012 (arising out of SLP (C) No.7595-7596 of 2011 dated February 24, 2012 without considering the fact that the facts and circumstances of such case being clearly distinguishable from the present case?

(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?

2. Learned Counsel for the appellant submitted that order passed by the Tribunal is perverse as the delay of merely 32 days in filing of appeal has not been condoned. The Tribunal has failed to take into consideration relevant legal position. Rather the matter was examined as if each and every day's delay was to be explained. The period of delay was not huge that the principles of law laid down by the Hon'ble Supreme Court in ***Office of Post Master Vs. Living Media India Private Limited*** reported as ***(2012) 3 SCC 563***, were applied.

3. On the other hand, learned Counsel for the respondent submitted that the aforesaid judgment of the Hon'ble Supreme Court clearly provides that the unexplained delay of any State agency cannot be condoned. The case in hand falls in that category. The officers of the Government cannot be given latitude to

get up at any time and file appeals. The period of limitation provided in any statute has to be adhered to.

4. After hearing the learned Counsel for the parties, we find merit in the submissions made by learned Counsel for the Revenue. It is not a case where the delay was huge and the appellant had been sleeping over the matter for months or years together. The delay was merely 32 days. No doubt latitude is not to be granted to the Government officers for sleeping over the matter but each case has to be examined on its own merits. A perusal of the order passed by the Tribunal shows that each and every day's delay was sought to be counted. However, we find that reasonable grounds were made out for condonation of 32 days delay in filing the appeal before the Tribunal.

5. For the reasons mentioned above, we find merit in the present appeal. The same is accordingly accepted. The substantial question of law, the answer is in favour of the revenue and against the assessee. The order passed by the Tribunal is set aside and the matter is remitted back to the Tribunal for hearing the same on merits.

6. The parties are directed to appear before the Tribunal on April 5, 2021 for further proceedings.

KOLKATA	**(ANIRUDDHA ROY)**	**(RAJESH BINDAL)**
08.02.2021	**JUDGE**	**JUDGE**
PA(SG)		