OD-11

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

IA No.GA/2/2018 (Old No. GA/600/2018)
In
ITAT 61 of 2018

PRINCIPAL COMMISSIONER OF INCOME TAX-2 PUNE
Vs
M/S. NALCO WATER INDIA LTD. (FORMERLY NLC NALCO INDIA LTD.)

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Dated : 2nd December, 2021.

Appearance:
Mr. P.K. Bhowmik, Adv.
...for the appellant.

Mr. Paras S. Savla, Adv.
Mr. A.K. Dey, Adv.
Mr. Pratik Poddar, Adv.
...for the respondent.

The Court: This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the 'Act', in brevity) and is directed against the order dated 5th April, 2017 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.2111/Kol/2013 for the assessment year 2008-09.

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, was justified in restricting the disallowance of travelling and conveyance to 5% of total disallowance without considering the facts of the case as well as the information brought on record by the Assessing Officer in the course of assessment proceedings as well as the remand proceedings?

b) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal, was justified in restricting the disallowance of Labour Supply Expenses to 5% of total disallowance without considering the facts of the case as well as the information brought on record by the Assessing Officer in the course of assessment proceedings as well as the remand proceedings?

c) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal, was justified in allowing the Miscellaneous Expenses of Rs.51,98,275/- without considering the facts of the case as well as the information brought on record by the Assessing Officer in the course of assessment proceedings as well as the remand proceedings?

Heard Mr. P.K. Bhowmik, learned senior standing counsel for the appellant/Revenue and Mr. Paras S. Savla, learned counsel for the respondent/assessee.

Three issues have been raised by the Revenue.

The first of which is with regard to the restriction of the travelling and conveyance allowance to 5% of the total disallowance made by the Assessing Officer. The Tribunal affirmed the order passed by the CIT(A) and on reading paragraph 16 of the order passed by the Tribunal, we find that the Tribunal has considered the factual finding recorded by the CIT(A) and pointed out that a considerable approach has been taken by the CIT(A) and disallowed 5% of the reimbursement of the travelling expenses and it found no fault in such order. We are of the view that the matter being entirely factual, order passed by the Tribunal cannot be faulted.

The second issue is with regard to the restriction of disallowance of labour supply expenses to 5%. This issue was also examined by the Tribunal and it was pointed out by the Tribunal in paragraph 21 of the impugned order that the CIT(A) took note of the remand report which was vague and after considering all the facts restrictions of disallowance of 5% which was affirmed by the Tribunal. We find that the order passed by the Tribunal cannot be stated to be perverse and unreasonable so as to re-appreciate the same.

The third and the last issue is with regard to allowing of miscellaneous expenses. This issue was considered by the Tribunal in paragraph 27 of the impugned order and affirmed the view taken by the CIT(A) taking note of the remand report wherein the Assessing Officer did not point out any defects in the details furnished by the assessee. Thus, we are of the clear view that no question of law, much less substantial questions of law arisen for consideration in this appeal.

Accordingly, the appeal fails and the same is dismissed.

The stay application being IA No. GA 2 of 2018 (Old No. GA 600 of 2018) also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pkd