Serial No. OD - 10

HIGH COURT AT CALCUTTA
(ORIGINAL SIDE)

ITAT/40/2020
IA NO.GA/1/2020 (OLD NO.GA/1196/2020)
GA/2/2020(OLD NO.GA/1197/2020)
(Through Video Conferencing)

PRINCIPAL COMMISSIONER OF INCOME TAX-4, KOLKATA
….Appellant(s)

Through: Mr. P.K. Bhowmick with Mr. Ashok Bhowmick, Advocates

v/s

HINDUSTAN GUM AND CHEMICALS LTD.
. ….Respondent(s)

Through: Mr. J.P. Khaitan, Senior Advocate (VC) with Mr. Sanjay Bhaumik, Ms. Swapna Das, Mr. Siddhertho Das, Advocates

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

HON'BLE MR. JUSTICE ANIRUDDHA ROY, JUDGE

O R D E R

1. Challenging the order passed by the Income Tax Appellate Tribunal passed in ITA No. 891/Kol/2017 for assessment year 2012-13 dated 31.05.2018, the present appeal has been filed in this Court.

2. The appeal is accompanied by an application seeking condonation of delay of 497 days in filing thereof. The following substantial questions of law were sought to be raised :-

(i) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal is justified in law in not considering the CBDT Instruction No. 3/2010 dated 23rd March, 2010 which stipulates that notional loss of Foreign Exchange derivative is not to be allowed to be deducted from total income but to be added back to the total income, while the Learned Tribunal allowed reliefs to the assessee company on account of Marked to Market loss ?

(ii) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in deleting the additions made by the Assessing Officer on the question of Marked to Market loss in contravention to the provision of section 37(1) of the Income Tax Act, 1961 which stipulates that capital/speculation expenditure is not an allowable expenditure for deduction ?

(iii) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal justified in law in allowing relief to the assessee company on account of additional depreciation without considering the third proviso to section 32(1)(ii) which came into effect on 1st April, 2016 by virtue of the Finance Act, 2016 without retrospective effect ?

(iv) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal is justified in law in properly not applying the test of application of

Third proviso of the section 32(1)(ii) of the Income Tax Act, 1961 ?

3. At the very outset learned Counsel for the Revenue submitted that question Nos. 1 and 2 were decided against the Revenue by the Income Tax Appellate Tribunal (for short 'the Tribunal') vide order dated 14th February, 2018, passed in I.T.A. No. 1410 (Kol) of 2016 and 1601 (Kol) of 2016 for the Assessment Year 2010-11.

4. In ITAT 320 of 2018 filed in this Court, order dated 14th February, 2018, passed by the Tribunal, was challenged. The aforesaid appeal was admitted only for issues pertaining to interpretation of Section 14A of the Income Tax Act, 1961 read with Rule 8D(2)(ii) of the Income Tax Rules, whereas the aforesaid two questions at Sr.Nos (i) & (ii), were not entertained considering the fact that the Tribunal had followed its earlier order passed in the case of assessee for the earlier assessment year, which had attained finality, keeping in view of the judgments of the Hon'ble Supreme Court *in the case of CIT vs. Woodward Governor India (P) Ltd. (312 ITR 254) and ONGC vs. CIT (322 ITR 180)*

5. If aforesaid questions of law are not entertained, the learned Counsel for Revenue fairly submits that tax effect relating to question Nos. 3 and 4 would be less than Rs.1 crore. In view of the circular No.17/2019 F.No.279/Misc.142/2007-ITJ(Pt.) dated August 8, 2019 issued by Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes Judicial Section, whereby the monetary limit for filing appeals before the High Court has been increased to ₹1 crore and the tax effect in the present being less than that, he may be permitted to withdraw the present appeal.

6. The prayer made by learned counsel for the revenue is allowed, however, keeping the legal issue open.

KOLKATA
13.01.2021
GH/S.Das.

(ANIRUDDHA ROY)
JUDGE

(RAJESH BINDAL)
JUDGE