OD-119&120

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

ITAT/71/2021
IA NO: GA/1/2021
PRINCIPAL COMMISSIONER OF INCOME TAX (IT AND TP), KOLKATA
VERSUS
M/S. DONGFANG ELECTRIC CORPORATION

ITAT/71/2021
IA NO: GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX (IT AND TP), KOLKATA
VERSUS
M/S. DONGFANG ELECTRIC CORPORATION

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 9th December, 2021

Appearance :-
Mr. Asok Bhowmick, Adv., led by
Mr. Smarajit Roychowdhury, Adv.
... For Appellant
Mr. Nageswar Rao, Adv.
Mr. Avra Majumder, Adv.
Sk. Md. Bilwal Hossain, Adv.
... For Respondent

The Court : Heard Mr. Asok Bhowmick, learned Junior Standing Counsel appearing for the appellant/revenue and Mr. Nageswar Rao, learned Counsel appearing for the respondent/assessee.

There is a delay of 598 days in filing this appeal. The affidavit filed in support of the application for condonation of delay states certain reasons, which are fully administrative in character. From the averments it is seen that papers have been going from one officer to another as per their hierarchy and ultimately the draft of the grounds was submitted to the Ministry of Law on 7th November, 2019. We find the affidavit to be bereft of particulars. This Court can take judicial notice of the fact that never the revenue files the appeals on time. However, we have granted indulgence in certain cases by condoning the delay though there is an affidavit strenuously opposing the time. This discretion was exercised by us bearing in mind that the case should not be thrown out on technicality because we are required to ascertain as to whether the substantial questions of law arises for consideration. In the instant case we cannot exercise that discretion owing to the hard facts.

These facts have been brought on record by the respondent in their affidavit-in-opposition. It is stated that under the Vivad Se Biswas Scheme (for short, VSB Scheme) assesses were allowed to settle pending tax dispute and in this regard respondent has referred to two of its letters dated 29th January, 2021 and 4th March, 2021 addressed by the appellant to their Assessing Officer whereby year-wise details of the appeals were intimated to the Assessing Officer while opting for order for settlement under VSB Scheme and further, the letter clearly states that the period covered by the present appeals was intimated to the Assessing Officer while opting for the settlement under VSB Scheme and it is also clearly indicated that no appeal filed by the Department was pending and the time allowed for such filing had lapsed and therefore, no action can be taken under VSB Scheme. In respect of all other pending litigation before various forums including departmental appeals for the assessment years 2009-10, 2010-11 and 2011-12, the assessee has availed the benefit of the Scheme.

The assessee would further state that they availed the benefit of the Scheme irrespective of merits involved in the Schemes as the project offices which were set up in India had completed the assignment and with a view to bring finality to the issue and put an end to all the litigations respondent opted to go for the Scheme. Therefore, the learned Counsel appearing for the respondent would submit that if the inordinate delay in filing these appeals is condoned, then the assessee will be put to a great prejudice, more particularly, when they would be unable to now go under the said Scheme.

When the affidavit-in-opposition along with the letters dated 29th January, 2021 and 4th March, 2021 were filed before this Court, we had granted opportunity to the revenue to file their affidavit-in-reply. We have perused the affidavit-in-reply which is nothing but an improved version of the affidavit filed in support of the application for condonation of delay. The specific averment made by the respondent in their affidavit-in-opposition in paragraph 7 therein specifically has not been dealt with by the appellant revenue in the reply.

Thus, we find that the delay in filing the appeal is inordinate, unexplained and therefore, cannot be condoned. Thus, the application for condonation of delay being GA/1/2021 is dismissed.

Consequently, the appeal being ITAT 71/2021 and the connected stay application being GA/2/2021 also stand dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/S.Das
AR(CR)