OD-35 & 36

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

IA No.GA/2/2018 (Old No.GA/1197/2018)
ITAT/164/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-I, KOLKATA
-Versus-
M/S. MEGHALAYA CEMENTS LIMITED

IA No.GA/1/2018 (Old No.GA/1196/2018)
ITAT/164/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-I, KOLKATA
-Versus-
M/S. MEGHALAYA CEMENTS LIMITED

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 23rd November, 2021.

Appearance:
Mr. Tilak Mitra, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Siddharha Das, Adv.
Ms. Swapna Das, Adv.
...for the respondent.

The Court : We have heard Mr. Tilak Mitra, learned standing Counsel appearing for the appellant/Revenue and Mr. J. P. Khaitan, learned senior counsel for the respondent/assessee.

We are satisfied with the reasons assigned in the affidavit filed in support of the petition and, therefore, we are exercising discretion to condone the delay in filing the appeal. Accordingly, the delay is condoned. The application is allowed.

This appeal by the revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 2nd August, 2017 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata (the 'Tribunal') in IT(SS) Nos.148 to 154/Kol/2016 for the assessment years 2007-08, to 2013-14.

The revenue has raised the following substantial questions of law for consideration :

"a) Whether on the facts and circumstances of the case the Learned Appellate Tribunal has erred in law while treating the amount of VAT remission as eligible for deduction under Section 80IC of the Income Tax Act, 1961, when essentially, it is of the nature of duty draw back and can't be called a profit derived from industrial undertaking and cannot be reckoned in computing deduction under Section 81C of the Income Tax Act, 1961 ?

b) Whether on the facts and circumstances of the case the Learned Appellate Tribunal has erred in law in allowing deduction under Section 81C of the Income Tax Act, 1961 on VAT remission which is contrary to law laid down in the case of Ritesh Industrial Ltd. reported in [2005] 274 ITR 324 and also in the case of CIT versus H.M. Steels Limited reported in [2015] 62 taxmann.com 252 (Punjab & Haryana)?

c) Whether on the facts and circumstances of the case the Learned Appellate Tribunal has erred in law in allowing the deduction under Section 81C of the Income Tax Act, 1961 on VAT remission by relying on the decision in the case of Meghalaya Steels which is distinguishable and not applicable *in the instant case since it was on the issue of subsidy and not on VAT remission?"*

The tribunal by the impugned order allowed the assessee's appeal following the decision of the tribunal in assessee's own case in ITA/2185/Kol/2014 for the assessment year 2010-11. As against the said the revenue preferred appeal to this Court in ITA/113/2019 which was dismissed by judgment dated 26th August, 2019 on the ground hat the issue is covered in favour of the assessee and against the revenue by the judgment and order of the Hon'ble Supreme Court in Commissioner of Income Tax vs. Meghalaya Steels Ltd. reported in [2016]383 ITR 217 (SC).

The substantial questions of law raised for consideration before us as well as those which were raised in ITA/113/2019 are identical. Therefore, the issues having attained finality, we are inclined to follow the decision of this Court in the earlier appeal i.e. ITA/113/2019 arising out of the assessee's own case for the assessment year 2010-11.

The connected stay application also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./pa