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

IA No.GA/2/2017 (Old No. GA/1504/2017)
In
ITAT 183 of 2017

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
Vs
USHA MARTIN TELEMATIC LIMITED

AND

IA No.GA/1/2017 (Old No. GA/1503/2017)
In
ITAT 183 of 2017

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
Vs
USHA MARTIN TELEMATIC LIMITED

BEFORE:

The Hon'ble JUSTICE T. S. SIVAGNANAM

AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 25th November, 2021.

Appearance:
Mr. Debasish Chowdhury, Adv.
...for the appellant.

Mr. Avra Mazumder, Adv.
...for the respondent.

Re.: IA No.GA/1/2017 (Old No. GA/1503/2017)

The Court : Heard Mr. Debasish Chowdhury, learned Counsel appearing for the appellant/Revenue and Mr. Avra Mazumder, learned Counsel appearing for the respondent/assessee.

We have perused the affidavit filed in support of the petition and we find the reasons given are acceptable. Accordingly, the delay of 62 days in the filing the appeal is condoned. The application is allowed.

Re.: IA No.GA/2/2017 (Old No. GA/1504/2017) in ITAT 183 of 2017

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act (the 'Act' in brevity) and is directed against the order dated 21.09.2016 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (the 'Tribunal') in ITA No. 838/Kol/2009 and ITA No.815/Kol/2009 for the assessment year 2004-05.

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

- A) Whether the in the facts and circumstances, learned Income Tax Appellate Tribunal was justified in holding that principal loan amount, in connection with interest charged, was utilised for the purpose of business and also observed that during the year assessee engaged in the business of earning profit and finance, therefore, the interest borrowed for the purpose of business should be allowed as revenue expenditure?
- B) Whether the learned Income Tax Appellate Tribunal erred in law and on the facts and circumstances in deleting the addition of interest expenses of Rs.25,44,73,131/- in connection with the loans which was utilised for acquiring capital asset (investment in share), by holding that it is revenue expenditure?
- C) Whether the in the facts and circumstances, learned Income Tax Appellate Tribunal was justified in treating a capital expenditure as revenue expenditure?

Learned Counsel appearing for the respondent/assessee submitted that the respondent/assessee has availed the benefit of the Vivad Se Vishwas

scheme and the Form No.3 has been issued on 21.04.2021 and the respondent/assessee is awaiting receipt of the Form No.5.

In the light of the said submission, the appeal stands disposed of on the ground that the respondent/assessee has availed the benefit of the said scheme. In the event, there is a contingency for restoring the appeal, we grant liberty to Revenue to restore the appeal, if need be.

Accordingly, the appeal stands disposed of and the substantial questions of law are left open.

The stay application being GA/2/2017 (Old No. GA/1504/2017 accordingly stands disposed of.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)