OD – 7 & 8

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

IA NO:GA/2/2017 (OLD NO. GA/3331/2017)
IN
ITAT/337/2017
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA – 2, KOLKATA
VS.
M/S MADHU JAYANTI INTERNATIONAL LTD.

IA NO:GA/1/2017 (OLD NO. GA/3330/2017)
IN
ITAT/337/2017
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA – 2, KOLKATA
VS.
M/S MADHU JAYANTI INTERNATIONAL LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: November 23, 2021.

[Via video conference]

Appearance :
Ms. Sucharita Biswas, Adv.
... for the appellant

Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
... for the respondent/assessee

RE: IA NO:GA/1/2017 (OLD NO. GA/3330/2017) in ITAT/337/2017

The Court : This application has been filed to condone the delay in preferring the appeal.

We have heard Ms. Sucharita Biswas, learned standing counsel appearing for the appellant/Revenue and Ms. Swapna Das, learned counsel appearing for the respondent/assessee. There is a delay of 201 days in filing the appeal. We have perused the affidavit filed in support of the petition. We are satisfied with the reasons and the cause shown. Accordingly, the delay in filing the appeal is condoned and the petition stands allowed.

RE: IA NO:GA/2/2017 (OLD NO. GA/3331/2017) in ITAT/337/2017

This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) is directed against the order dated 03.08.2016 passed by the Income Tax Appellate Tribunal, Kolkata "C" Bench, Kolkata in ITA No.1957/KOL/2013 for the Assessment Year 2006-07. 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 Tribunal was justified in law in upholding the decision of the CIT (A) in allowing the benefit of deduction under Section 10B of the said Act despite the fact that the assessee did not fulfil the requisite condition of being a manufacturer ?

(b) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law to dismiss the appeal of the revenue by relying upon

> the assessee's own case in I.T.A. No.1463/Kol/2007 dated 20.07.2013 for the assessment year 2004-2005 without going into the merits of the case ?

We have heard Ms. Sucharita Biswas, learned standing counsel appearing for the appellant/Revenue and Ms. Swapna Das, learned counsel appearing for the respondent/assessee. The learned counsel appearing for the respondent/assessee submitted that the assessee has availed the benefit of *Vivad Se Vishwas Scheme* and Form No.4 has been issued by the department on 30.10.2021. Therefore, the appeal stands disposed of with liberty to the Revenue to restore the appeal in the unlikely event of the application being rejected under the said scheme.

With the disposal of the appeal, the connected application also stands disposed of.

It goes without saying that in the event appeal has to be heard on merits, the Revenue will be entitled to urge the above mentioned substantial questions of law which they have framed for consideration.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/bp