OD – 5 & 6

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

IA NO: GA/2/2021
IN
ITAT/17/2021
PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA
VS.
BANGIYA GRAMIN VIKASH BANK

IA NO: GA/1/2021
IN
ITAT/17/2021
PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA
VS.
BANGIYA GRAMIN VIKASH BANK

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : February 21, 2022.

[Via Video Conference]

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

Mr. Soumitra Chowdhury, Adv.
Mr. Avra Mazumder, Adv.
Mr. K. Roy, Adv.
Mr. Binayak Gupta, Adv.
... for the respondent

Re : IA No. GA/1/2021

The Court : We have heard Mr. Debasish Chaudhuri, learned standing counsel appearing for the appellant/revenue and Mr. Soumitra Chowdhury duly assisted by Mr. Avra Mazumder, Mr. K. Roy, Mr. B. Gupta, learned counsel for the respondent/assessee.

There is a delay of 732 days in filing the appeal. The respondent/assessee has filed affidavit-in-opposition objecting to the condonation of delay. However, taking note of the fact that the order passed by the Tribunal which is impugned before us is a consequential order giving effect to an order passed under Section 263 of the Act, we exercise discretion and condone the delay in filing the appeal. Hence, the petition for condonation of delay is allowed.

Re : ITAT 17 of 2021

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) against the order dated 28th August, 2018 passed by the Income Tax Appellate Tribunal, "D" Bench, Kolkata (Tribunal) in ITA No. 2219/Kol/2017 for the assessment year 2010-11.

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

a. *Whether in the facts and in the circumstances of the case and in law, Learned ITAT erred in holding that the fresh order passed by the assessing officer under Section 143/263 of the Income Tax Act, 1961 on the issue has become infructuous and upholding the order of the CIT (A) in spite of the facts that the order the ITAT in ITA No. 877/Kol/2015 dated 12-05-2017 has not attained finality and appeal has been filed before the Hon'ble High Court at Calcutta on this issue?*

b. *Whether the ITAT erred in law and in the facts of this case in holding that the fresh order passed by the assessing officer under Section 143/263 of the Income Tax Act, 1961 on the issue has become infructuous and upholding the order of the CIT (A) in spite of the facts that the order the ITAT in ITA No. 877/Kol/2015 dated 12-05-2017 has not attained finality and appeal has been filed before the Hon'ble High Court at Calcutta on this issue?*

We have heard Mr. Debasish Chaudhuri, learned standing counsel appearing for the appellant/revenue and Mr. Soumitra Chowdhury duly assisted by Mr. Avra Mazumder, Mr. K. Roy, Mr. B. Gupta, learned counsel for the respondent/assessee.

The order impugned before us is in an appeal filed by the revenue arising out of an order passed by the assessing officer dated 3rd March, 2016. This order was for giving effect to an order passed by the Commissioner of Income Tax, Kolkata – 14 exercising its jurisdiction under Section 263 of the Act. The substantive order passed by the Tribunal is the order dated 12th May, 2017 in ITA No. 877/Kol/2015 which was decided in favour of the respondent/assessee. The revenue preferred appeal against the said order in ITAT No. 60 of 2018 which was dismissed by judgment dated 23.11.2021. As mentioned, the order impugned before us arises out of consequential proceedings pursuant to the order passed under

Section 263 of the Act which order has been set aside and the same has been confirmed by this Court in ITAT No. 60 of 2018 dated 23.11.2018. Therefore, we have to necessarily hold that the substantial questions of law suggested do not arise in this case and consequently, the appeal stands dismissed.

Connected application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH