OD-3 & 4

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

IA No. GA 2 of 2018 (Old No. GA 93 of 2018)
in
ITAT 10 of 2018

PRINCIPAL COMM. OF INCOME TAX, CENTRAL-2, KOLKATA
Vs
M/S. HOOGHLY MILLS CO. LTD.

AND

IA No. GA 1 of 2018 (Old No. GA 92 of 2018)
in
ITAT 10 of 2018

PRINCIPAL COMM. OF INCOME TAX, CENTRAL-2, KOLKATA
Vs
M/S. HOOGHLY MILLS CO. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 14th February, 2022

Appearance:
Mr. Debasish Choudhury, Adv.
Mr. Radhamohan Ray,Adv.
...for the appellant.

Mr. Soham Sen, Adv.
...for the respondent.

Re.: IA No. GA 1 of 2018 (Old No. GA 92 of 2018)

The Court : We have heard Mr. Debasish Choudhury, learned standing counsel assisted by Mr. Radhamohan Ray, learned counsel appearing for the appellant/revenue and Mr. Soham Sen, learned counsel appearing for the respondent/assessee.

There is a delay of 80 days in filing the instant appeal. We are satisfied with the reasons given in the affidavit filed in support of the condone delay application and, therefore, we are exercising discretion to condone the delay. Accordingly, the delay in filing the appeal is condoned.

The application being IA No. GA 1 of 2018 (Old No. GA 92 of 2018) for condonation of delay is allowed.

Re.: ITAT No.10 of 2018

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 2nd June, 2017 passed by the Income Tax Appellate Tribunal, 'B' Bench, Kolkata in ITA No. 423/Kol/2014 for the assessment year 2009-10. 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 Hon'ble Income Tax Appellate Tribunal, "B" Bench, Kolkata erred in law in holding that disallowance under Section 14A of the Income Tax Act, 1961 cannot be made in a year in which no exempt income has been earned or received by the assessee without considering the CBDT's Circular No.5/2014 dated February 11, 2014?

b) Whether on the facts and in the circumstances of the case the Hon'ble Income Tax Appellate Tribunal, "B" Bench, Kolkata erred in law in holding that the disallowances under Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 is to be in relation to the income which does not form a part of the total income and this can be done only by taking into consideration the investment which has given rise to this income which does not form part of the total income while as per Rule 8D, those investments are also to be taken, income from which shall not form part of the total income?

We have heard Mr. Debasish Choudhury, learned standing counsel assisted by Mr. Radhamohan Ray, learned counsel appearing for the appellant/revenue and Mr. Soham Sen, learned counsel appearing for the respondent/assessee.

Learned counsel appearing for the respondent on instructions from his client submitted that the appeal cannot be pursued by the revenue on the ground of low tax effect. The department has orally informed to the learned counsel for the appellant/revenue. We have verified the assessment order dated 21.12.2011 and we find that the total tax as computed by the assessing officer is Rs.88,51,796/- and if that be so the revenue cannot pursue the appeal as it will be hit by the circular issued by the CBDT.

For such reason, the appeal stands disposed of on the ground of low tax effect. Consequently, substantial questions of law are left open.

The application being IA No.GA 2 of 2018 (Old No. GA 93 of 2018) for stay also stands disposed of.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pkd.