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ITAT/11/2011
IA No.GA/1/2011 (Old No.GA/76/2011)
IA No.GA/2/2011 (Old No.GA/77/2011)

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

COMMISSIONER OF INCOME TAX,
KOLKATA-III

-Versus-

M/S. VIVADA INLAND WATERWAYS LTD.

Appearance:
Ms. Smita Das De, Adv.
...for the appellant.

Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 6th June, 2022.

The Court : 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 18th December, 2009 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA No.1193/Kol/2009 for the assessment year 2001-02.

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

- i) *Whether on the facts and circumstances of the case the Ld. Tribunal erred in holding that the interest subsidy amounting to Rs.212.08 lacs should be deemed as income u/s. 41(1) of the Income Tax Act and though accrued in the Assessment year 2001-02 will be charged in the Assessment Year 2002-03, inspite of the respondent following the mercantile system of accounting?"*

We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant/revenue and Ms. Swapna Das and Mr. Siddhartha Das, learned Advocates for the respondent/assessee.

There is a delay of 257 days in filing the appeal. An affidavit-in-opposition has been filed by the respondent/assessee submitting that there is absolutely no reason given for the inordinate delay. The Hon'ble Division Bench which heard the matter on earlier occasion had condoned the delay subject to payment of costs vide order dated 9th March, 2011. It is not in dispute that the cost has not been paid by the department. Nevertheless, we have heard the learned standing counsel for the appellant on the merits of the matter as well as the learned counsel for the appearing for the respondent/assessee. We exercise the discretion and condone the delay so that the appeal can be disposed of. Accordingly, the application for condonation of delay (GA No.76/2011) is allowed and the delay in filing the appeal is condoned.

We have perused the order passed by the tribunal which is impugned before us and we find that the tribunal has approved the factual finding recorded by the Commissioner of Income Tax (Appeals). The matter pertains to the applicability of the provisions of Section 41(1) of the Act. The tribunal after taking note of the facts has dismissed the appeal filed by the revenue and the following finding has been rendered by the tribunal:

"From the above it is evident that the letter is written by IWAI to IDBI. In this letter, IWAI has conveyed the sanction of payment of interest subsidy amounting to Rs.2,12,07,878/- to IDBI in respect of loan granted to M/s. Vidada Inland Waterways Ltd. i.e. the assessee. The C.I.T.(A) in his order has arrived at the finding that the subsidy was given by IWAI to IDBI and not the assessee. The correspondence between IDBI and IWAI for claim of subsidy as well as grant of subsidy supports the finding of the CIT (A). The IDBI made the claim of subsidy from IWAI and the interest subsidy was granted to IDBI, of course IDBI has to pass on the same to M/s. Vivada inland Waterways Ltd., i.e. the assessee. Now as per agreement between the assessee and IDBI, the loan was sanctioned on an interest rate of 21% per annum. From time to time, IDBI debited the assessee's account with the interest calculated @21%. The assessee also debited the same in its books of account and claimed the expenditure thereof. When the subsidy is granted to IDBI by IWAI, it credited to the account of the assessee on 18/4/2001. When the amount is

credited to the account of the assessee, it was the remission of the liability of the interest which was already claimed as a deduction in the earlier years and, therefore, the C.I.T. (A) rightly held that the provision of Sec.41(1) would be applicable when there is actual remission or cessation of liability and which was during the accounting year relevant to assessment year 2002-03 and not in the year under consideration. In view of the above, we entirely agree with the order of the C.I.T.(A) on this point as well. Accordingly, the Revenue's appeal as well as grounds no. 1 to 4 of the assessee's cross-objection are rejected."

From the above finding rendered by the tribunal we note that the matter is entirely factual and the tribunal while approving the factual finding recorded by the CIT(A) has also taken note of the facts and re-appreciated the same and dismissed the appeal filed by the revenue. Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal (ITAT/11/2011) stands dismissed. Consequently, the connected application for stay (GA/77/2011) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)