OD-4

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

ITAT/5/2020
IA No.GA/1/2020 (OLD NO. GA/383/2020)
GA/2/2020 (OLD NO. GA/384/2020)
PRINCIPAL COMMISSIONER OF INCOME TAX - 4 KOLKATA
VS.
M/s. J.J. EXPORTERS LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 26th July, 2022

Appearance :
Mr. Prithu Dudhoria, Adv…
for the appellant.
Ms. Swapna Das, Adv.
…for respondent

GA/1/2020

The Court : We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant and Ms. Swapna Das, learned Advocate appearing for respondent.

There is a delay of 301 days in filing the appeal.

We are satisfied with the reasons reflected in the affidavit in support of the application for condonation of delay. Accordingly, the application is allowed. Delay in filing the appeal is condoned.

ITAT/5/2020

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 19th September, 2018 of "C" Bench passed by the Income Tax Appellate Tribunal, Kolkata in C.O. No. 71/Kol/2018 in ITA No. 1371/Kol/2017 for the A.Y. 2008-09 and C.O. No. 72/Kol/2018 in ITA No. 1372/Kol/2017 for the A.Y. 2009-10.

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

i) Whether the Ld. ITAT has erred in law as it failed to appreciate that, in Transactional Net Margin Method (TNMM) it requires transactions to be "broadly similar" to qualify as comparable unlike as in Comparable Uncontrolled Price (CUP) method where the transactions has to be exactly similar ?

ii) Whether the Ld. ITAT has erred in law by accepting the transactional margin of the assessee determined solely in respect of sales to the Associate Enterprises (AE) instead of entity level margin as per TNMM in absence of bifurcation/allocation of cost regarding sales made to AE and non-AE ?

iii) Whether on the facts and circumstances of the case as well as in law, the Ld. ITAT has erred by directing to consider only those investments for which exempt income has been earned during the year, and not the total investment for disallowance U/s.14A of the Act ?

The learned Advocate for the respondent has produced copy of the letter written by the director of the respondent company dated 14.12.2020 from which it is seen that winding up proceedings had been initiated against the respondent company before the National Company Law Tribunal, Calcutta Bench and at that relevant point of time when the communication dated 14th December, 2020 was sent the matter was under progress before the Tribunal. It is informed to this Court by the learned Advocate for the respondent that as of now the company has been wound up.

In the light of the same the revenue cannot proceed with the instant appeal.

Accordingly the appeal stands disposed of for the aforementioned reasons.

Consequently, substantial questions of law are left open.

The application GA/2/2020 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/GH