OD-21 & 22

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

IA No. GA 2 of 2021
in
ITAT 35 of 2021

THE PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VERSUS
M/S. MODERN GEARS PVT. LTD.

AND

IA No. GA 1 of 2021
in
ITAT 35 of 2021

THE PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VERSUS
M/S. MODERN GEARS PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd February, 2022

Appearance:
Mr. Debasish Chowdhury, Adv.
Mr. Madhu Jana, Adv.
...for the appellant.

Mr.Suryaneel Das, Adv.
...for the respondent.

Re.:IA No. GA 1 of 2021

The Court : We have heard Mr. Debasish Chowdhury, learned standing counsel assisted by Mr. Madhu Jana, learned counsel appearing for the appellant/revenue and Mr. Suryaneel Das, learned counsel appearing for the respondent/assessee.

There is a delay of 594 days in filing the appeal. Though the explanation offered by the appellant for the inordinate delay is not convincing, taking note of the submission by learned counsel for the respondent/assessee that the appeal cannot be pursued by the revenue on the ground of low tax effect, we exercise discretion and condone the delay in filing the appeal. Accordingly, the application being IA No.GA 1 of 2021 is allowed.

<u>Re.:ITAT No.35 of 2021</u>

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 20.02.2019 passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata (the Tribunal) in ITA No.2742/Kol/2013 for the assessment year 2010-11. The revenue has raised the following substantial questions of law for consideration:

(i) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal has erred in law as well as facts in treating business income of the assessee company as income from Short Term Capital Gains?

(ii) Whether on the facts and circumstances of the case and in law, a company purchase and sales shares, it must be shown that they were held as stock in trade and that existence of power to purchase and sell shares in the memorandum of association is not decisive of the nature of transaction?

We have heard Mr. Debasish Chowdhury, learned standing counsel assisted by Mr. Madhu Jana, learned counsel appearing for the appellant/revenue and Mr. Suryaneel Das, learned counsel appearing for the respondent/assessee.

It is submitted by learned counsel for the respondent/assessee that the appeal cannot be pursued by the revenue on the ground of low tax effect. In this regard, learned counsel has placed before us a comparative statement for tax calculation as per proposed variation. The income from short-term capital gains which was to be treated as income from business and profession was Rs.4,03,87,445/-. As per the return of income filed by the assessee, the amount which was mentioned is Rs.57,17,487/-. The addition made by the assessing officer was Rs.1,11,53,425/- and the difference between the amount returned and the addition made is Rs.54,35,938/-. Adding 10% towards surcharge and 3% to the education cess, the total tax amount comes Rs.61,58,920/-.

In the light of the said submission of the respondent while recording the same, we dispose of this appeal on the ground of law tax effect. Consequently, the substantial questions of law are left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pkd.