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

ITAT/25/2020
IA NO: GA/1/2020 (OLD NO. GA/736/2020);
GA/2/2020 (OLD NO. GA/737/2020)
PRINCIPAL COMMISSIONER OF INCOME TAX – 2, KOLKATA
VS.
M/s. DADRA EXIMP PVT. LTD. (FORMERLY M/s. NAGREEKA SYNTHETICS PVT. LTD.)

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : AUGUST 03, 2022.

Appearance :
Mr. Prithu Dudhoria, Adv
....for appellant

GA/1/2020 (OLD NO.GA/736/2020)

The Court : We have heard Mr. Prithu Dudhoria, learned Standing Counsel for the appellant. Though notice has been served on the respondent, but none appears for the respondent.

We have heard Mr. Agnibesh Sengupta, learned Advocate appearing for the respondent/assessee.

As per the note submitted by the Superintendent Appeal Section, High Court, Original Side the case papers are not traceable and unconditional apology has been tendered. The said apology is accepted and one set of photostat copy of the stay petition as well as the condone delay petition be obtained from the learned standing Counsel from the appellant and be kept on record.

It appears that there is a delay of 517 days in filing the appeal. We have perused the affidavit filed in support of the condone delay application and we are satisfied with the reasons given therein. Accordingly, the delay in filing the appeal is condoned. The application for condonation of delay in filing the appeal is allowed.

ITAT/25/2020

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 7th May, 2018 passed by the Income Tax Appellate Tribunal, "D" Bench I.T.A. No. 2242/Kol/2016 for the assessment year 2010-2011. The revenue has raised the following substantial question of law for consideration:-

a) Whether on the facts and the circumstances of the case, the Learned Income Tax Appellate Tribunal, "D" Bench, Kolkata was justified in law in holding that once the Commissioner of Income Tax (Appeals) has decided on merits in the appeal under Section 143(3) of the Income Tax Act, 1961 restricting the disallowance under Section 14A of the Income Tax Act, 1961, the re-computation of disallowance under Section 14A of the Income Tax Act, 1961 as per said decision was required to be simply followed by the assessing officer during the proceeding under Section 147/143(3) of the Income Tax Act, 1961 as the necessary corollary ?

We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant.

It cannot be disputed by the revenue that substantial question of law has been answered against the revenue in several cases. The Tribunal has also taken into consideration the factual position and recorded the following finding :-

"*In our opinion, when the disallowance under section 14A was originally made by the A.O. in the assessment completed under section 143(3) and th same was merely repeated in the assessment under section 147/143(3), the issue relating to the said disallowance was required to be decided on merit by the Ld. CIT (A) in the appeal filed by the assessee against the order under section 143(3) and when the same was actually decided by him as such on merit, the re-computation of disallowance under section 14A as per the said decision was required to be simply followed by the A.O. during the proceeding under section 147/143(3) as a necessary corollary. We, therefore, find no infirmity in the impugned order of the Ld. CIT (A) giving such a direction to the A.O. accordingly and even the learned DR has not been able to raise any material contention to dispute this position*".

In the light of the above factual conclusion we find that there is no question of law, much less substantial question of law, arises for consideration in this appeal.

Accordingly, the appeal stands dismissed.

Consequently, GA/2/2020 (Old No. GA/737/2020) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH