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

ITAT/54/2018
IA NO: GA/1/2018 (OLD NO. GA/554/2018)
GA/2/2018 (OLD NO. GA/555/2018)
PRINCIPAL COMMISSIONER OF INCOME TAX KOLKATA
VS.
M/s. JJ EXPORTS PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 5, 2022.

*Appearance:*
*Ms. Smita Das De, Adv.*
*… for appellant*
*Ms. Swapna Das, Adv.*
*Mr. Siddhertha Das, Adv.*
*…for respondent*

***GA/1/2018(GA/554/2018)***

The Court : We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant and Ms. Swapna Das and Mr. Siddhertha Das, learned Advocates for the respondent.

There is a delay of 127 days in filing this appeal.

We have perused the affidavit filed in support of the application and we find sufficient cause has not been shown to prefer the appeal within the period of limitation. Accordingly, the application is allowed and the delay in filing the appeal is condoned.

***ITAT/54/2018***

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 12th May, 2017 passed by the Income Tax Appellate Tribunal "C" Bench Kolkata in I.T.A. No. 201/Kol./2012 for the assessment years 2007-08.

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

i) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in deleting the disallowance of Rs.14,60,01,803/- made by the assessing officer on the basis of observation of the Auditor in Column No. 17(1) of Tax Audit Report dated 30.10.2017?

ii) Whether on the facts and in the circumstances of the case, the Ld. Tribunal has erred in law in accepting the additional evidence in the form of corrigendum issued by the Auditor to column No. 17(1) to Tax Audit Report?

iii) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in not determining the arm's length PLI in accordance with Section 92C of the Income Tax Act, 1961, read with Rule 10B and Rule 10C of the Income Tax Rules, 1962 ?

iv) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in not applying the basic principle of transfer pricing provision of comparing like with like for the purpose of conducting the bench marking study ?

v) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in failing to understand that under application of TNMM, the act provides comparison of tested party's net profitability rather that its gross profitability, with the net profitability of uncontrolled comparable companies ?

We have heard Ms. Smita Das De, learned standing Counsel for appellant and Ms. Swapna Das and Mr. Siddhertha Das, learned Advocates for the respondent assessee.

It is pointed out by the learned Advocates appearing for either side that in the assessee's own case for the assessment year 2008-09 and 2009-2010, the appeal filed by the revenue in ITAT/5/2020 was disposed of on the ground that National Company Law Tribunal, Kolkata Bench has passed an order by which the company has been wound up. The said decision will equally apply to the case on hand, which is for the assessment year 2007-08.

In the light of the above, following in ITAT/5/2020 dated 26$^{th}$ July 2020, the appeal stands disposed of on the ground that the company has been wound up and accordingly revenue cannot pursue this appeal any further.

Consequently, substantial questions of law are left open.

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(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH