OD –17 & 18

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

IA NO.GA/2/2021
In
ITAT/45/2021
PRINCIPAL COMMISSIONER OF INCOME TAX - 1, KOLKATA
VS.
M/S. EXIDE INDUSTRIES LTD.

IA NO.GA/1/2021
In
ITAT/45/2021
PRINCIPAL COMMISSIONER OF INCOME TAX - 1, KOLKATA
VS.
M/S. EXIDE INDUSTRIES LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : February 14, 2022.

[Via Video Conference]

Appearance :
Mr. S.N. Dutta, Adv.
... for the appellant

Mr. Abhratosh Majumdar, Sr. Adv.
Ms. Nilanjana Banerjee Pal, Adv.
... for the respondent

The Court : We have heard Mr. S.N. Dutta, learned standing counsel appearing for the appellant/revenue and Mr. Abhratosh Majumdar, learned senior counsel, duly assisted by Ms. Nilanjana Banerjee Pal, learned counsel for the respondent/assessee.

There is a delay of 843 days in filing the appeal. We have perused the dates and events as set out in the affidavit filed in support of the condone delay application sworn in by the Principal Commissioner of Income Tax, Kolkata. To say the least there is absolutely no explanation for the inordinate delay. As pointed out by the learned senior counsel for the respondent, order passed by the Tribunal has been given effect to by the assessing officer by passing an order dated 08.03.2019 under Section 254/144C(4) read with Section 143(3) of the Act. Copy of the order was placed before us from which we find that the assessing officer has verified the facts and figures and found that own funds were available with the assessee which were far more than the investment made in the tax free security during the year under consideration and therefore no disallowance is being made under Rule 8D(2)(ii) of the Income Tax Rules. It is surprising to note that the department though was aware that the order passed by the Tribunal was implemented as early as on 08.03.2019 by the assessing officer, there is absolutely no whisper of such decision taken by the assessing officer in the affidavit filed in support of the condone delay application. It would have been well open to the department to take note of the same and mention about giving effect to an order. That apart the dates and events which have been mentioned in the affidavit-in-opposition by the respondent/ assessee as culled out from the condone delay application filed by the department shows that there is absolute lethargy on the part of the department in not preferring the appeal within the period of limitation.

Therefore, we find sufficient cause has not been shown by the department to condone 843 days delay. Hence, the petition is dismissed.

Consequently, the appeal stands rejected.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH