OD-10

ITAT/46/2021
IA No.GA/1/2021
IA No.GA/2/2021

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA

-Versus-

M/S. WEST BENGAL STATE ELECTRICITY TRANSMISSION CO. LTD.

Appearance:
Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Pranit Bag, Adv.
Mr. Anuj Mishra, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 12th April, 2022.

The Court : We have heard Mr. Vipul Kumdalia, learned standing counsel assisted by Mr. Anurag Roy, learned Advocate appearing for the appellant/revenue and Mr. J. P. Khaitan, learned Senior Counsel assisted by Mr. Pranit Bag and Mr. Anuj Mishra, learned Advocates for the respondent.

There is a delay of 328 days in filing the appeal. On perusal of the relevant dates we find that the appellant/revenue would be entitled to the benefit of the order passed by the

Hon'ble Supreme Court extending the period of limitation for filing of appeal under various enactments. For such reasons, the application for condonation of delay (IA No.GA/1/2021) is allowed and the delay in filing the appeal is condoned.

Re: ITAT/46/2021:

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 18th December, 2019 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the 'Tribunal' in short) ITA No.1261/Kol/2018 for the assessment year 2008-09.

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

"a) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law confirming the Order of the Commissioner of Income Tax (Appeal) who relied the order passed by the Tribunal in ITA No.1005(Kol) of 2013 but Learned Tribunal ignoring the fact that the Department has already filed appeal before the Hon'ble Court against the said order ?*

b) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal failed to appreciate that the case involved substantial amount of revenue as well as audit objection ?

c) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law in quashing the revisional order under section 263 of the Act passed by Commissioner of Income Tax ?"

We have heard Mr. Vipul Kundalia, learned standing counsel for the appellant/revenue.

The order impugned in this appeal passed by the tribunal arises out of an order of assessment passed by the Deputy Commissioner of Income Tax, Circle-2, Kolkata dated 3rd March, 2014 under Section 263 read with Section 143(3) of the Act. As against the order passed by the Commissioner under Section 263 of the Act, the matter travelled to the tribunal and thereafter before this Court in ITAT No.155/2017. By judgment dated 13th December, 2021 the appeal filed by the revenue was dismissed and the substantial questions of law were answered against the revenue. The present proceedings being a sequel to the order passed under Section 263 has to be necessarily rejected in the light of the order in ITAT/155/2017.

For the above reasons, the appeal filed by the revenue (ITAT/46/2021) is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay IA No.GA/2/2021 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/As.