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

ITAT/28/2011
IA No:GA/2/2011 (Old No.:GA/332/2011)
PRINCIPAL COMMISSIONER OF CGST & CX, HOWRAH COMMISSIONERATE
VERSUS
M/S. BENGAL HAMMER INDUSTRIES (P) LTD. & ORS.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 4TH MAY, 2022.

Appearance:-
Mr. Prithu Dudheria, Adv.
...for Appellant
Mr. A.K. De, Adv.
... for respondent

The Court : 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 29th July, 2005, passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA Nos.1071-1072/Kol/2005 for the assessment years 2000-01 and 2001-02 respectively.

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

(a) Whether on the facts and in the circumstances of the case the Income Tax, Appellate Tribunal erred in law in deleting the disallowance made by the Assessing Officer of expenses claimed by the assessee on account of alleged licence fee paid to RPG Enterprises Limited ?

(b) Whether on the facts and in the circumstances of the case the Income Tax, Appellate Tribunal erred in law in disallowing expenses under section 14A of the Income Tax Act, 1961 by determining the expenses attributable to earning of dividend income which is exempt from income tax, was on correct principles ?

We have heard Mr. Prithu Dudheria, learned Standing Counsel appearing for the appellant/revenue and Mr. A.K. De, learned Advocate appearing for the respondent/assessee.

We find from the order-sheet that the Hon'ble Division Bench by order dated 30th March, 2011 found that there is a delay in filing the appeal by the revenue and directed the revenue to pay Rs.10,000/- as cost to the learned Advocate appearing for the respondent/assessee within three weeks from the date of the order i.e. three weeks from 30th March, 2011. Further, the order states that in default of payment of such cost within the said period, the application would stand dismissed and consequently the appeal will be dismissed as barred by limitation.

Learned Advocate appearing for the respondent/assessee has submitted that the cost has not been paid to him till date. Therefore, we have no other option except to dismiss the application filed under Section 5 of the Act. Consequently, the appeal filed by the revenue is rejected.

Learned Standing Counsel appearing for the appellant would submit that tax effect in this appeal is also below the threshold limit as prescribed by the Circular issued by the CBDT.

For the above reasons, the application being IA No:GA/2/2011 (Old No:GA/332/2011) stands rejected and the substantial questions of law suggested are left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/GH.
AR(CR)