Form No.[J2]

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

PRESENT:
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

ITAT/86/2017
IA NO:GA/2/2017 [OLD NO:GA/765/2017]

PRINCIPAL COMMISSIONER OF INCOME TAX-11, KOLKATA
VS.
BRAVO SPONGE IRON [P] LTD.
....

ITAT/86/2017
IA NO:GA/1/2017 [OLD NO:GA/764/2017]

PRINCIPAL COMMISSIONER OF INCOME TAX-11, KOLKATA
VS.
BRAVO SPONGE IRON [P] LTD.
....

For the appellant: Mr. Debasis Chowdhury, Adv.
Mr. Soumen Bhattacharyya, Adv.

For the respondent: None appears

Heard on : February 7, 2022.

Judgement on : February 7, 2022.

RE: GA/1/2017 [OLD NO:GA/764/2017)

T.S. SIVAGNANAM, J. : We have heard Mr. Debasis Chowdhury, learned senior standing counsel for the appellant/revenue assisted by Mr. Soumen Bhattacharyya, learned junior standing counsel.

There is a delay of 64 days in filing this appeal. It is submitted by the learned counsel for the appellant/revenue that notice has been served on the respondent/assessee but affidavit of service has not been filed. Taking note of the fact that the order impugned in this appeal is of the year 2016 and the appeal was filed in the year 2017, with consent of the learned standing counsel for the appellant, we decide to hear out the matter on merits. Therefore, for such reason alone, we condone the delay in filing the instant appeal.

The application, IA NO.GA/1/2017 [OLD No:GA/764/2017] stands disposed of accordingly.

RE: ITAT/86/2017

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961, (the Act, in brevity) is directed against the order dated 24.6.2016 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (Tribunal) in ITA No.783/Kol/2014 for the assessment year 2009-10. The revenue has raised the following substantial question of law for our consideration.

a. Whether on the facts and in the circumstances of the case, the Tribunal erred in law in holding that under Section 263 of the Income Tax Act, 1961 the Commissioner is required to confine himself to the terms of notice and foreclosing consideration of any other issue or question of fact especially in view of the latest Supreme Court decision on this issue?

We have heard Mr. Debasis Chowdhury, learned senior standing counsel for the appellant/revenue assisted by Mr. Soumen Bhattacharyya, learned junior standing counsel.

The short question which falls for consideration is whether the Commissioner of Income Tax, Kolkata-1 [CIT(A)] while issuing a notice under Section 263 of the Act and adjudicating the matter can travel beyond the allegations set out in the said notice. This issue has been settled in several decisions and it will be beneficial to take note of the decision in the case of Commissioner of Customs vs. Toyo Engg. India Ltd. (2006) 7 SCC 592 wherein the Hon'ble Supreme Court held that the department cannot travel beyond the show cause notice. This decision which was followed by the High Court of Delhi in the case of CIT vs. Contimeters Electricals (P) Ltd. (2009) 317 ITR 249 (Del) was rightly taken note of by the Tribunal and the appeal filed by the assessee was allowed. Therefore, we find that there is no error committed by the Tribunal in deciding the issue in favour of the assessee. For such reason, the appeal is dismissed and the substantial question of law is answered against the revenue.

The stay application, IA NO.GA/2/2017 [OLD NO:GA/765/2017] also stands dismissed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

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AR(CR)