OD-19&20

ITAT/55/2021
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, CENTRAL-1, KOLKATA

-Versus-

M/S. HALDIA PETROCHEMICALS LIMITED

Appearance:
Mr. Smarajit Roychowdhury, Adv.
Mr. Madhu Jana, Adv.
...for the appellant.

Mr. Ajay Gaggar, Adv.
...for the respondents.

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

Date : 4th March, 2022.

GA/1/2021

The Court : We have heard Mr. Smarajit Roychowdhury, learned counsel assisted by Mr. Madhu Jana, learned advocate for the appellant and Mr. Ajay Gaggar, learned counsel for the respondent.

There is a delay of 442 days in filing the appeal. Learned counsel appearing for the respondent/assessee vehemently opposes the prayer for condonation of delay by filing affidavitin-opposition stating therein that there is no explanation, much less sufficient cause shown by the revenue for condonation of the inordinate delay in filing the appeal.

The submission of the learned counsel for the respondent appears to be correct as there is no explanation offered by the revenue. However, since we are considering an appeal under Section 260A of the Income Tax Act, 1961, we are required to examine as to whether any substantial question of law arises for consideration. Therefore, for such reason alone, we exercise discretion and condone the delay in filing the appeal. Accordingly, the petition for condonation of delay (IA No.GA/1/2021) is allowed.

ITAT/55/2021:

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 6th September, 2019 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (in short the 'Tribunal') in ITA No.2044/Kol/2016 for the assessment year 2004-05.

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

> *"i) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal erred in deleting disallowance of payment of Rs.1,82,20,420/- made by the Assessing Officer on account of sum payable to M/s. Nuovo Pignone ?*

ii) *Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal erred in allowing the fuel expenses of Rs.65,96,955/- pertaining to financial year 2001-2002 ?*

iii) *Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal erred in allowing excess depreciation of Rs.90,87,890/- ?*

We have heard Mr. Smarajit Roychowdhury, learned counsel assisted by Mr. Madhu Jana, learned advocate for the appellant/revenue and Mr. Ajay Gaggar, learned counsel for the respondent/assessee.

On perusal of the order passed by the Tribunal, we find that with regard to the first issue, the Tribunal affirmed the order passed by the Commissioner of Income Tax (Appeals) [CIT(A)] with regard to the disallowance of the payments made to M/s. Nuovo Pignone. After noting the factual details the Tribunal has held that the assessee had itself not pressed its grievance regarding the balance disallowance amount of Rs.9,21,337/- and, therefore, affirmed the order passed by the CIT(A). Thus, we find there is no substantial question of law arising for consideration on the said issue.

The second question which has been framed by the revenue is with regard to fuel expenses pertaining to the financial year 2001-02. The Tribunal on facts found that the revenue’s contention was to revive prior period operation and maintenance and disallowance of Rs.34,20,986/- as oil fuel amount claims of Rs.65,96,955/- stated to be pertaining to the financial year 2001-02. The Tribunal noted that there is no dispute that the assessee has been assessed at the maximum marginal rate in the two assessment years and such a prior period expenditure disallowance in a case of maximum marginal relating to the two assessment years is a revenue instance and, therefore, rejected the plea raised by the revenue. On this issue also, we find there is no substantial question of law arising for consideration.

With regard to the excess depreciation which was disallowed by the assessing officer, set aside by the CIT(A), the Tribunal examined the same and found that the assessee had lodged claim for damages regarding its plant and machinery, generator before the insurance company on 5th April, 2003 and the insurance company had paid ad hoc amount of Rs.325 crores against the said claim in September, 2003 and, therefore, the assessee chose to correct the claim in the asset block in the relevant previous year which was less than 180 days after crystallisation of its damage claimed in September, 2003 and calculated depreciation accordingly. Noting that on the peculiar facts the CIT(A) had rightly reversed the assessing officer's finding, rejected the appeal filed by the revenue. On this issue also, we find there is no substantial question of law for consideration as on facts it has been found that the insurance company accepted the claim by letter dated 7th June, 2004 and full payment was made and the claim was crystallised after September, 2003. Therefore, the said question also cannot be construed to be a substantial question of law arising for consideration.

For the above reasons, the appeal (ITAT/55/2021) is dismissed on the ground that no substantial question of law arises for consideration.

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

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.NathA/s.