

Form No. (J2)

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

P R E S E N T:

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

**ITAT/75/2021
IA NO.GA/1/2021**

**PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL - 1,
KOLKATA
VS.
M/S. RASHMI METALIKS LTD.**

**ITAT/75/2021
IA NO.GA/2/2021**

**PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL - 1,
KOLKATA
VS.
M/S. RASHMI METALIKS LTD.**

**Appearance :
Mr. P.K. Bhowmick, Adv.
Mr. Asok Bhowmick, Adv.
... for the appellant**

**Mr. Agnibesh Sengupta, Adv.
..for the respondent**

Heard on : 31.01.2022

Judgment on : 31.01.2022

T.S. SIVAGNANAM, J. :- We have heard Mr. P.K. Bhowmick, learned standing Counsel for appellant/revenue and Mr. Agnibesh Sengupta, learned Counsel for respondent/assessee.

There is a delay of 983 days in filing this appeal and the respondent/assessee has filed an affidavit-in-opposition pointing out that substantial portion of the delay remains unexplained and the little explanation given for the remaining period is also bereft of particulars. We find that the delay of eight months i.e. from 5.9.2018 to 24.4.2019 has not been explained . Similarly the delay from 15.7.2019 to 17.2.2020 has not been explained. Therefore, we would have been well justified in dismissing the application and refusing to condone the delay. However, since the appeal has been filed by the revenue under Section 260A of the Act we thought fit to consider as to whether any substantial questions of law would arise for consideration in this appeal. When this suggestion was put forth to the learned Counsel for the parties, learned Counsels readily agreed to argue the main appeal itself on merits. Hence for that reason alone we exercise discretion and condone the delay in filing the appeal.

ITAT/75/2021 :

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order passed by the Income Tax Appellate Tribunal “C” Bench (Tribunal) dated

02.05.2018 in ITA/813 to 816/Kol/2017 for the assessment years 2009-10 to 2012-13.

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

1. Whether in the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, Kolkata is justified in quashing the revisionary order under section 263 passed by the Learned Pr. Commissioner of Income Tax, Central-1, Kolkata for the year 2009-10, 2010-11 & 2011-12 on the ground the assessment years became unabated proceedings without considering the provisions of Section 153A of the Income Tax Act that the Assessing Officer shall assess or reassess the total Income of six assessment years immediately preceeding the assessment year relevant to the previous year in which such search is conducted or requisition is made as nowhere in the Act it is stated that the assessment should be made on the basis of seized document?
2. Whether on the facts and circumstance of the case and in law, the Learned Income Tax Appellate Tribunal was justified in admitting fresh evidence by acknowledging the letters filed by the assessee as evidence that M/s.

Rashmi Cement Pvt Ltd and M/s. Orissa Metaliks Pvt Ltd have for certain periods used the railway sidings thereby concluding that the infrastructure facility was used by other parties also when the fact is that these closely held Private Limited Companies are group companies of Rashmi Group and cannot be treated as separate entity?

3. Whether on the facts and circumstances of the case and in law, the Learned Tribunal Tax Appellate Tribunal was justified in holding that the assessee is entitled to deduction under section 80IA and quashing the order under Section 263 thereby denying that Assessing Officer to conduct enquiry relating to the claim under section 80IA particularly in the light of freight evasion which could have an impact on the agreement with the railways and consequent denial of 80IA claim for the Assessment Year 2012-13?

We have heard Mr. P K Bhowmick, learned Counsel duly assisted by Mr. Asok Bhowmick for the appellant/revenue and Mr. Agnibesh Sengupta, learned Counsel for the respondent/assessee.

The short question involved in this appeal is whether the assessee was entitled to the benefit of deduction under Section 80-IA(4). The assessing officer completed the assessment under Section

153A read with Section 143(3) by order dated 31.03.2015. Though there were several issues involved, the issue which is the subject matter for consideration before us was decided in favour of the assessee, vide order dated 31st March, 2015. Though the said issue is as to whether the assessee was entitled for deduction under Section 80-IA (4) of the Act was directly not considered, the collateral issue was whether there were incriminating documents available during the search and seizure operations and when there was nothing recovered or seized during the search and seizure operations relatable to the claim of deduction under Section 80-IA(4) whether such deduction could have been denied. Accordingly, assessment stood completed for all the four assessment years by allowing the deduction. The Principal Commissioner of Income Tax, Central I, Kolkata (PCIT) invoked its power under Section 263 of the Act among other things proposed that on scrutiny of the assessment records it is seen that the assessee had claimed deduction under Section 80-IA(4) of the Act for its private railway sidings. This according to the PCIT was not admissible. Accordingly, show cause notice dated 28.02.2017 was issued under Section 263 of the Act. Assessee filed their objections which did not find favour with the PCIT and the same was rejected and the proposal was confirmed by separate orders dated 20.03.2017 for all the four assessment years. Aggrieved, by such order, the assessee filed appeal before the Tribunal. The Tribunal has done a very thorough factual

examination. Firstly, it went into aspect as to whether every loss of revenue as a consequence of an order of the assessing officer could be treated as prejudicial to the interest of revenue and erroneous. In this regard, the Tribunal rightly took note of the decision rendered in another case wherein the Tribunal has relied on the decision of the Hon'ble Supreme Court in M/s. Malabar Industrial Co. Ltd. Vs. CIT; reported in 2000 243 ITR 83 and held that every assessment order which may result in loss of revenue cannot be treated to be prejudicial to the interest of revenue. Thereafter the Tribunal proceeded to examine as to whether the assessing officer was right in granting the benefit of the deduction under Section 80-IA(4) of the Act. After taking note of the relevant statutory provision, the Tribunal examined the various covenants contained in the agreement entered into between the assessee and the Indian Railways and in particular Clause 19 of the agreement dealing with the Railway Administration's right regarding use of the sidings and after noting the said condition and also other related facts the Tribunal granted relief to the assessee. The revenue seeks to sustain the order passed by the PCIT under Section 263 of the Act by contending that the two companies which were permitted to use the railway sidings were group companies of the assessee and they were closely held companies by the assessee and, therefore, cannot be construed to be used by general public. This contention of the revenue has to be outrightly rejected and such

narrow interpretation of the agreement entered into between the assessee and Indian Railways cannot be given. In our opinion, the Tribunal rightly referred to the various clauses in the agreement and came to the conclusion that the Railway Administration had a right to use all the sidings which have been put up by the assessee. Thus, the assessee would squarely fall within the ambit of clause (b) of Section 80-IA(4) of the Act. Further, we note Tribunal has relied on the decision in the case of Tamilnadu Petro Products Vs. Assistant Commissioner of Income Tax (2011) 13 taxman.com 139(Madras). In the said decision the Court took note of the decision in the case of CIT Vs. Tanfac Industries Ltd.; [SLP (C) No. 18537 of 2009], wherein while applying Section 80-IA(4) of the Act, The Hon'ble Supreme Court took a view that the value of steam used for captive consumption by the assessee was entitled to be deducted under Section 80-IA of the Act. In Tamilnadu Petro Products (supra) the revenue contended that the expression "derived from" should be given restricted meaning in which event the claim of the assessee cannot be countenanced. This argument by the revenue was rejected by holding that Section 80-IA (4) provides for the benefit even in respect of electricity generation plant established by the assessee and income derived from such enterprise of the assessee and it was held that the assessee has fully complied with the requirement prescribed under Section 80IA in order to avail the benefit provided therein. The above decision will squarely

apply to the facts of the case on hand. Furthermore, the Tribunal also relied upon the decision of the ITAT Mumbai Bench in the case of JSW STEEL VS. PCIT in ITA NOS.4063, 4064 and 4086/MUM/2017 dated 30/11/2017 wherein identical facts were involved and thus we are of the clear view that the Tribunal rightly allowed the appeal filed by the assessee.

In the result, the present appeal filed by the assessee stands dismissed and substantial questions of law are answered against the revenue.

Consequently, stay application stands dismissed.

(T. S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)