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

ITAT/195/2018
IA NO: GA/1/2018 (OLD NO. GA/1469/2018);
GA/2/2018 (OLD NO. GA/1470/2018)
THE COMMISSIONER OF INCOME TAX (TDS) KOLKATA
VS.
M/s. ITD-ITD CEM JV (CONSORTIUM OF ITD-ITD CEMENTATION)

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : AUGUST 03, 2022.

Appearance :
Mr. Prithu Dudhoria, Adv
....for appellant
Mr. Agnibesh Sengupta, Adv.
...for respondent

GA/1/2018 (OLD No.GA/1469/2018)

The Court : We have heard Mr. Prithu Dudhoria, learned Standing Counsel for the appellant. Since this is an appeal of the year 2018 it appears that the matter has not been assigned to any standing Counsel.

We, therefore, direct Mr. Prithu Dudhoria, learned Advocate to accept notice on behalf of the appellant and his appearance shall be regularised.

We have heard Mr. Agnibesh Sengupta, learned Advocate appearing for the respondent/assessee.

There is a delay of 195 days in filing the appeal. We have perused the affidavit filed in support of the condone delay application and we are satisfied with the reasons given therein. Accordingly, the delay in filing the appeal is condoned. The application for condoning the delay in filing the appeal is allowed.

ITAT/195/2018

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 12th July, 2017 passed by the Income Tax Appellate Authority, Kolkata "B" Bench I.T.A. No. 1462/Kol/2014 for the assessment year 2011-2012. The revenue has raised the following substantial questions of law for consideration:-

i] Whether on the facts and circumstances of the case the learned Income Tax Appellate Tribunal has erred in law in not interfering with the order of learned Commissioner of Income Tax [Appeals] to the extent of deletion of charge of TDS and interest of Rs.28,86,995/- under section 194I of the Income Tax Act, 1961 ?

ii] Whether on the facts and circumstances of the case the learned Income Tax Appellate Tribunal has erred in law by failing to treat the payment of Rs.2,16,90,806/- as land rent to Airport Authority of India on which no TDS had been deducted by the assessee is liable for tax deducted at source ?

The appeal is of the year 2018 and it appears that the matter has not been assigned to any specific standing Counsel of the department. Therefore, we have directed Mr. Prithu Dudhoria, learned standing Counsel to accept notice on behalf of the appellant and his appearance shall be regularized by the Ministry of

Law & Justice. We have heard Mr. Agnibesh Sengupta, learned Advocate appearing for respondent/assessee. As rightly pointed out that the tax effect in the present appeal is Rs.21,69,081/- as mentioned in paragraph 2 of the stay application. If that be the case, the revenue cannot pursue appeal on the ground of low tax effect. Accordingly, the appeal stands disposed of on the ground of low tax effect.

Consequently, substantial questions of law are left open.

As per the note submitted by the Superintendent Appeal Section, High Court, Original Side the case papers are not traceable and an unconditional apology has been tendered by the Registry. The same is accepted and one set of photostat copies of the papers of the application and the affidavit shall be obtained from the learned Advocate appearing for the respondent/assessee and kept on record.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH