OD-5

ITAT/86/2011
IA No.GA/1/2011 (Old No.GA/968/2011)
IA No.GA/2/2011 (Old No.GA/969/2011)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
KOLKATA-III

-Versus-

M/S. EMPIRE & SINGLO TEA LTD.

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 11th July, 2022.

IA No.GA/1/2011:

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant.

There is a delay of 104 days in filing the appeal.

Though the respondent has not been served, we are of the view that the application can be disposed of since the issue involved in the main appeal has to be decided against the revenue for more than one reason. Therefore, we exercise discretion and allow the application and condone the delay of 104 days in filing the appeal.

Accordingly, IA No.GA/1/2011 (Old No.GA/968/2011) is allowed.

ITAT/86/2011:

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 9th June, 2010 passed by the Income Tax Appellate Tribunal, Kolkata, "A" Bench, Kolkata in ITA No.697/Kol/2010 for the assessment years 2005-06.

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

> *i) Whether on the circumstances of the case, the learned Income Tax Appellate Tribunal has erred in law by considering cess payable on green leaves as not related solely to agricultural operation but as an allowable deduction from the composite income of cultivation and manufacturing of tea, before computation of the portion of income chargeable to tax ?*

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue.

We find from the impugned order that the tax effect will be less than the threshold limit fixed by the circular issued by the CBDT since the addition made by the assessing officer was a sum of Rs.89,71,000/- and the tax at 33% on the said amount will be less than Rs.1 crore. That apart, we take note of the fact that the tribunal has relied upon the decision of this Court in CIT vs. AFT Industries Ltd. reported in 2004 (270) ITR 167 (Cal.).

For the above reasons, the appeal (ITAT/86/2011) is dismissed and the substantial question of law is answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/2011) also stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

As/S.Das
AR(CR)