OD-15&16

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

ITAT/127/2021
IA NO: GA/1/2021
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
VERSUS
M/S. RASHMI METALIKS LTD.

ITAT/127/2021
IA NO: GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
VERSUS
M/S. RASHMI METALIKS LTD.

BEFORE :

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

Date : 7th March, 2022

Appearance :-

Mr. S.N. Dutta, Adv.
Mr. Asok Bhowmick, Adv.
... For Appellant

Mr. Agnibesh Sengupta, Adv.
Ms. Pritha Basu, Adv.
Ms. Ananya Das, Adv.
... For Respondent

The Court : Heard Mr. S.N. Dutta, learned Standing Counsel appearing for the appellant/revenue and Mr. Agnibesh Sengupta, learned Counsel appearing for the respondent/assessee.

There is a delay of 690 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay as well as the affidavit-in-opposition filed by the assessee and the reply filed by the department. Substantial number of days of delay has not been explained. We note that the limitation for filing the appeal expired on 4th October, 2019, whereas the appeal was presented only on 24th August, 2021. Though the affidavit filed in support of the application for condonation of delay appears to be an elaborate affidavit, all that is manifest from such affidavit is absolute bureaucratic approach by the Income tax department leading to belatedly filing of the appeal. Though the affidavit seeks to give certain explanation, we find several loopholes in the affidavit and substantial number of days of delay remains unexplained, more particularly, for the period from 4th September, 2019 to 27th January, 2020.

We could see that the concerned file has been circulated to all several officers of the department and at each junction considerable time was taken by the concerned officer. We find that the Additional CIT, Range II, Central had to reminded for more than two occasions to draft the substantial questions of law and forward the same to the department. The matter did not stop with that. Subsequently, the file had been circulated to higher officers and there is a reference to a collegium consisting of DGIT and CCIT who had accorded approval for filing appeal only for the Assessment Year 2012-13. This approval is said to have been made on 18th February, 2020 and even thereafter the appeal was not filed immediately but once again circulated to various other officers and ultimately was presented only on 24th August, 2021. It is not clear as to what is the procedure adopted by the Income Tax department in the State of West Bengal with regard to filing of appeals before this Court under Section 260A of the Income tax Act, 1961. Very often we find that appeals are filed with inordinate delay and the explanation offered by the department is far from satisfactory. Very peculiarly in the case on hand, we find that though the draft of Memorandum of appeal was settled, once again the files have been circulated to higher officials to take a decision to file an appeal. Under normal circumstances the department takes a decision to file an appeal and thereafter proceeds to act. However, we find in the case on hand, the process has been in the reverse. It is not clear as to why such a reverse process has been adopted. In any event, there is no separate limitation Act for the government. The learned Counsel appearing for the respondent/assessee pointed out that three substantial questions of law have been suggested by the department of which question nos.1 and 2 are entirely factual and the third question does not arise for consideration for the assessment year 2012-13 for which the present appeal has been filed. In this regard learned Counsel has referred to the relevant paragraphs of the assessment order of the Tribunal, more particularly, paragraph 13 from which we find that the third substantial question of law as suggested does not arise for consideration for the assessment year in question. This will also go to show that there has been non-application of mind on the part of the concerned officer while settling the Memorandum of grounds of appeal. Thus, we are fully convinced that the appellant department has not shown any cause for not preferring the appeal within time, much less sufficient cause for us to exercise discretion to condone the inordinate delay of 690 days in filing the appeal. For such reason, the application for condonation of delay, being IA/GA No.1 of 2021, is dismissed. Consequently, the appeal stands rejected.

With the dismissal of appeal, the stay application, being IA/GA No.2 of 2021, stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/SN
AR(CR)