OD – 7 & 8

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

IA NO.GA/2/2018 (Old No. GA/2110/2018)
In
ITAT/237/2018
PRINCIPAL COMMISSIONER OF INCOME TAX – 2, KOLKATA
VS.
M/S. LONG VIEW TEA CO. LTD.

IA NO.GA/1/2018 (Old No. GA/2109/2018)
In
ITAT/237/2018
PRINCIPAL COMMISSIONER OF INCOME TAX – 2, KOLKATA
VS.
M/S. LONG VIEW TEA CO. LTD.

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

Date : February 3, 2022.

[*Via Video Conference*]

Appearance :
Mr. Asok Bhowmik, Adv.
... for the appellant

Mr. J.P. Khaitan, Sr. Adv.
Mr. Soumya Kejriwal, Adv.
Mr. Anand Agarwal, Adv.
..for the respondent

The Court : We have heard Mr. Asok Bhowmik, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel duly assisted by Mr. Soumya Kejriwal and Mr. Anand Agarwal, learned counsel for the respondent/assessee.

There is a delay of 269 days in filing the appeal. We are satisfied with the reasons given in the affidavit filed in support of the condone delay petition. Accordingly, the delay in filing the appeal is condoned The petition for condonation of delay is allowed.

ITAT No. 237 of 2018

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 7th June, 2017 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (Tribunal) in ITA No. 1570/Kol/2014 for the assessment year 2006-07.

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

1. Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal has erred on facts and in law in allowing the write off of miscellaneous expenses being the net realisable value of the advance made against capital goods?
2. Whether on the facts and circumstances of the case the Income Tax Appellate Tribunal has erred on facts and law completely ignoring the facts while allowing the instant appeal of the assessee, erroneously relying on the decision of the Hon'ble High Court at Calcutta in appeal being I.T.A. No. 25 of 2008 in respect of the

Assessment year 2002-03 where an addition as deleted by the Learned Tribunal was confirmed by the Hon'ble High Court at Kolkata, wherein the question was whether setting aside the Order of the Assessing Officer by the Commissioner of Income Tax in exercise of his revisionary power under Section 263 of the I.T. Act, was involved and did not deal with the merit of the issues raised i.e. whether the write off of the miscellaneous expenses will be allowed or not?

3. Whether on the facts and circumstances of the case both in facts and in law, the Income Tax Appellate Tribunal has erred in allowing the miscellaneous expenses amortized?

We have heard Mr. Asok Bhowmik, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel duly assisted by Mr. Soumya Kejriwal and Mr. Anand Agarwal, learned counsel for the respondent/assessee.

It is brought to our notice that identical substantial questions of law were raised by the revenue in the assessee's own case for the assessment year 2001-02 in ITA No. 169 of 2015 and by judgment date 22.06.2018, the appeal was dismissed on the ground that no substantial question of law arises for consideration. The said decision having attained finality could bind the appellant/revenue. Thus, following the said decision, this appeal is also dismissed on the ground that no substantial question of law arises for consideration.

Consequently, the stay application stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH