OD-6

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

ITAT/145/2011
IA No:GA/1/2011 (Old No.:GA/1563/2011)
GA/2/2011 (OLD No.GA/1564/2011)
COMMISSIONER OF INCOME TAX, KOLKATA - II
VERSUS
CENTURY ENKA LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 4TH MAY, 2022.

Appearance:-
Ms. Smita Das De, Adv.
...for Appellant
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
... for respondent

The Court : 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 30th August, 2002, passed by the Income Tax Appellate Tribunal, "D" Bench, Kolkata in ITA No.690/Cal/2000 for the assessment years 1995-96.

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

> "Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in holding that the assessee could not be compelled to add the unrealised MODVAT excise credit at the time of valuation of the Closing Stock ?"

We have heard Ms. Smita Das Dey, learned standing counsel appearing for the appellant/revenue and Ms. Swapna Das, learned Advocate with Mr. Siddhartha Das, learned Advocate for respondent/assessee.

There is a delay of 3087 days in filing the appeal.

When the matter came up before the Hon'ble Division Bench and by order dated 6th September, 2011 direction was issued to the appellant/department to pay a cost of Rs.10,000/- to the respondent within a period of fortnight from the date of the said order. Admittedly, this condition has not been complied with by the appellant. Furthermore, we note that the order dated 6th Septembe, 2011 was a self-speaking order stating that if the cost is not paid within the time permitted the appeal would be dismissed as barred by limitation. Admittedly, till date the cost has not been paid.

Therefore, the application being GA/1/2011 (Old No. GA/1563/2011) filed under Section 5 of the Act stands dismissed.

Consequently, the appeal stands rejected.

However, substantial question of law as suggested is left open.

The stay application being GA/2/2011(Old No.GA/1564/2011) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/GH.
AR(CR)