OD-19

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

ITAT/22/2022
IA NO: GA/1/2022, GA/2/2022

PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
Vs
M/S. SUBHLABH STEELS PRIVATE LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8th June, 2022.

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

Mr. Debasis Lahiri, Adv.
...for respondent

Re.: IA No.GA/1/2022

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel appearing for the appellant and Mr. Debasis Lahiri, learned advocate representing the Insolvency Resolution Professional appointed by NCLT in the matter of the respondent/assessee.

There is a delay of 474 days in filing the appeal. Since the NCLT has already passed an order and in the light of Section 14 of the Insolvency & Bankruptcy Code, 2016, the appeal cannot be pursued by the revenue, we are inclined to exercise discretion and condone the delay in filing the appeal.

Accordingly, the application for condonation of delay is allowed.

Re.: ITAT 22/2022

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 is directed against the order dated 20th March, 2020 passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata in ITA/2047/Kol/2018 for the assessment year 2013-14.

The revenue has raised the following substantial question of law :

I. Whether, on the facts and circumstances of the case and on law learned ITAT was justified in quashing the order u/s 263 passed by the Principal Commissioner of Income Tax without appreciating the facts of the case as the assessing officer completely ignored to compute business income of the assessee after applying reasonable NP rate on rejection of books of accounts?

As against the respondent company an application for liquidation has been filed before the National Company Law Tribunal, Kolkata Bench and by order dated 9th December, 2021 the application filed by Chaitanya Alloys Private Limited, the operational creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 has been admitted and a moratorium as provided under Section 14 of the Code has been ordered. There are other directions issued by the NCLT as well.

Thus, in the light of the statutory provision and in the light of the decision of the Hon'ble Supreme Court in **PCIT- Vs. -Monnet Ispat and Energy Limited**, a Special Leave to Appeal (C) No.6483 of 2018 dated 10th August, 2018 and also in the light of the overriding provisions of the Code in terms of Section 238 of the Act, the revenue cannot pursue the appeal.

For such reasons, the appeal is dismissed and the substantial question of law is left open.

Consequently, the stay application also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.pal/GH