OD-5&6

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

ITAT/181/2019
IA NO:GA/1/2019 [OLD NO:GA/2655/2019]

PRINCIPAL COMMISSIONER OF INCOME TAX, ASANSOL
VS.
SRI TUSHAR KANTI BANERJEE
....
ITAT/181/2019
IA NO:GA/2/2019 [OLD NO:GA/2656/2019]

PRINCIPAL COMMISSIONER OF INCOME TAX, ASANSOL
VS.
SRI TUSHAR KANTI BANERJEE
....

PRESENT:
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
14th February, 2022.
[Video Conference]

Mr. P. K. Bhowmick, Adv…for appellant.

RE: **IA NO:GA/1/2019 [OLD NO:GA/2655/2019]**

The Court: We have heard Mr. P. K. Bhowmick, learned senior standing counsel for the appellant/revenue. None appears for the respondent. We find that none appeared for the respondent before the Tribunal.

There is a delay of 223 days in filing this appeal. We are satisfied with the reasons given in the affidavit filed in support of the condone delay petition and, accordingly, we condone the delay in filing the appeal.

The application, IA NO:GA/1/2019 [OLD NO:GA/2655/2019] stands disposed of accordingly.

RE: ITAT/181/2019

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961, (the Act, in brevity) is directed against the order passed by the Income Tax Appellate Tribunal, "D" Bench, Kolkata (Tribunal) dated 29.08.2018 in ITA Nos. 1741 to 1742 [Kol] of 2017 for the assessment years 2012-13 and 2013-14. The revenue has raised the following substantial questions of law for our consideration.

a. Whether the Learned Tribunal committed substantial error of law in dismissing the appeal filed by the revenue and in holding that cash payment to M/s. Assansol Bottoling and Packaging Co. Ltd. is not a violation of section 40A(3) of the Income Tax Act, 1961?

b. Whether on the facts and circumstances of the case, the Learned Tribunal was justified in law in holding that cash payment to M/s. Assansol Bottling & Packaging Co. Ltd. is exempt as per Rule 6DD(b) and 6DD(k) read with Section 40A(3) of the Income Tax Act, 1961 when there are no rules to specify that this payment was required to be made in cash only ?

We have heard Mr. P. K. Bhowmick, learned senior standing counsel for the appellant/revenue. The Tribunal has dismissed the appeal filed by the revenue for both the assessment years following the order passed in the assessee's own case wherein the Co-ordinate Bench of the Tribunal concluded that the transaction would fall within the exception provided under Rule

6DD(k) of the Income Tax Rules since they were acting as an agent of the Government of West Bengal, who were the Principal. Before the Tribunal the revenue was not able to point out any exception on facts for the assessment years under consideration. We find from the order passed by the Tribunal that the Commissioner of Income Tax (Appeals) has made a thorough factual exercise and has brought out the necessary ingredients to hold that the assessee's case falls under the exception provided under Rule 6DD(b) and 6DD(k). Thus, we find there is no question of law much less substantial question of law arising for consideration in this appeal. Accordingly, the appeal is dismissed.

Consequently, the stay application, IA NO:GA/2/2019 [OLD NO:GA/2656/2019] also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pkd/spal
AR(CR)