OD-9 & 10

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

IA NO. GA/2/2021
In ITAT/167/2021
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
Vs
M/S. BATA INDIA LIMITED

IA NO. GA/1/2021
In ITAT/167/2021
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
Vs
M/S. BATA INDIA LIMITED

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
And
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 25th March, 2022.

Appearance:
Mr. Prithu Dudheria, Adv.
...For the Appellant

Mr. Niraj Kr. Jain, Adv.
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
...For the Respondent

The Court : We have heard Mr. Prithu Dudheria, learned Junior Standing Counsel appearing for the appellant/revenue and Mr. Niraj Kumar Jain, learned Counsel appearing for the respondent/assessee, assisted by Ms. Swapna Das and Mr. Siddhartha Das, learned Advocates.

There is a delay of 980 days in filing the appeal. On perusal of the affidavit filed in support of the application for condonation of delay, we find no satisfactory explanations for the inordinate delay. Nevertheless the appeal having been filed under Section 260A of the Income Tax Act, 1961, the Court has to examine as to whether any substantial question of law arises for consideration. Therefore, for such reason alone we exercise discretion and condone the delay in filing the appeal. Accordingly, the application for condonation of delay being GA 1/2021 is allowed.

ITAT 167/2021

This appeal filed by the revenue is directed against the order dated 12th October, 2018 passed by the Income Tax Appellate Tribunal, "D" Bench, Kolkata ("Tribunal") in ITA No.2542/Kol/2017 for the assessment year 2007-08.

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

> "Whether the ITAT in the facts and circumstances and in law has erred in disposing the case without going into the merits and relying only upon its earlier orders vide ITA No.1204 & 1205/Kol/2013 and ITA No.753/Kol/2016 for A.Y. 2007-08 in the assessee's own case against which the department is in appeal before the Hon'ble High Court ?"

We have heard Mr. Prithu Dudheria, learned Junior Standing Counsel appearing for the appellant/revenue and Mr. Niraj Kumar Jain, learned Counsel appearing for the respondent/assessee.

The learned Counsel appearing for the respondent submitted that the revenue will not be entitled to peruse this appeal on the ground that the main order, which was subject matter of challenge before the Tribunal, in the assessee's own case for the very same assessment year in ITA No.1204-1205/Kol/2013 and ITA No.753/Kol/2016 was decided in favour of the assessee by order dated 3rd May, 2017, by which the order passed by the Commissioner of Income Tax (Appeals) under Section 263 was reversed. As against the said order of the Tribunal the revenue preferred appeal before this Court being ITA No.193 of 2018, which was dismissed by judgement dated 23rd July, 2021. Therefore, it is submitted that an independent challenge cannot be maintained by the revenue to the order passed by the Tribunal impugned in this appeal.

Learned Junior Standing Counsel for the appellant submitted that the order passed by this Court in ITA No.193 of 2018 dated 23rd July, 2021 was dismissing the appeal on the ground of low tax effect and therefore, the revenue should be permitted to agitate the substantial question of law suggested by them. Under normal circumstances we would have acceded to the submission of the learned Standing Counsel for the Department but, however, in the case on hand, the main order which was subject matter of challenge before the tribunal was decided in favour of the assessee and therefore, independent challenge cannot be maintained by the revenue to the consequential order passed thereafter.

On the above ground the appeal stands dismissed and the substantial question of law is left open.

With the dismissal of the appeal, the connected stay application being GA 2/2021 stands closed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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