Form No.[J2]

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

PRESENT:
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

ITAT/171/2021
IA NO:GA/1/2021

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
M/S. DUNLOP INDIA LTD.
....

ITAT/171/2021
IA NO:GA/2/2021

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
M/S. DUNLOP INDIA LTD.
....

For the appellant: Mr. P. B. Bhowmik, Adv.,
Mr. Arunava Ganguly, Adv.

For the respondent: None appears.

Heard on : January 25, 2022.

Judgement on : January 25, 2022.

RE: IA NO:GA/1/2021

T.S. SIVAGNANAM, J. : We have heard Mr. Bhowmik, learned senior standing counsel for the appellant/revenue. There is a delay of 720 days in filing this appeal. Though in the affidavit filed in support of the condone delay petition the dates and events have been given.

They are all administrative delay and the revenue cannot take any special privilege for not filing the appeal within the period of limitation. However, considering the fact that the respondent/assessee has already gone into liquidation and the company was not represented before the Tribunal and considering the nature of the issue, with consent of the learned senior standing counsel for the appellant we are inclined to take up the main appeal itself. Therefore, we exercise discretion and condone the delay. Accordingly, the delay in filing this appeal is condoned.

The application, IA NO.GA/1/2021 stands disposed of accordingly.

RE: ITAT/171/2021

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961, (the Act, in brevity) is directed against the order dated 31.7.2019 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal) in ITA No. 1272/Cal/2003 for the assessment year 1997-98. The revenue has raised the following substantial questions of law for our consideration.

a. Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, has erred in facts as well as in law in allowing Capital Payment towards purchase of knowhow wrongly claimed as Royalty Revenue Expenditure ?

b. Whether in the facts and in law method of payment is not conclusive to determine the nature of payment as Capital or Revenue Expenditure ?

We have heard Mr. Bhowmik, learned senior standing counsel for the appellant. The identical questions of law raised before us in this appeal were considered by us in ITAT/170/2021 in the assessee's own case for the earlier assessment year and by judgment dated 25.1.2022 the appeal was dismissed. Therefore, following said decision, the present appeal is also dismissed and the substantial questions of law are answered against the revenue.

The stay application, IA NO.GA/2/2021 also stands dismissed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

pkd/spal
AR(CR)