OD-31&32

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

ITAT/216/2011
IA NO: GA/2/2021 (Old No.GA/2162/2011)
COMMISSIONER OF INCOME TAX, KOLKATA-II, KOLKATA
VERSUS
NAGREEKA EXPORTS

ITAT/216/2011
IA NO: GA/1/2021 (Old No.GA/2161/2011)
COMMISSIONER OF INCOME TAX, KOLKATA-II, KOLKATA
VERSUS
NAGREEKA EXPORTS

BEFORE :

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

Date : 3rd February, 2022

Appearance :-
Mr. Soumen Bhattacharjee, Adv.
... For Appellant

Mr. Vivek Murarka, Adv.
... For Respondent

The Court : There is a delay of 2162 days in filing the appeal. By order dated 14th September, 2011 the Division Bench condoned the delay subject to payment of costs of Rs.10,000/-. When the matter is taken up today, there is nothing to indicate as to whether the cost has been remitted. Furthermore, no counsel has been nominated by the Ministry of Law to appear for the Income Tax Department. Since we felt that the Department should not go unrepresented, we direct Mr. S.N. Dutta, learned Senior Standing Counsel, assisted by Mr. Soumen Bhattacharjee, learned Junior Standing Counsel, to appear for the appellant. Let their nomination be regularised by the Ministry of Law.

We have heard Mr. Vivek Murarka, learned Counsel appearing for the respondent. It is pointed out by the learned Counsel for either side that the appeal cannot be pursued by the revenue on account of low tax effect. Therefore, for the reason above, we exercise discretion and condone the delay in filing the appeal. The application for condonation of delay is allowed.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 29th March, 2005 passed by the Income Tax Appellate Tribunal, `D' Bench, Kolkata in ITA Nos.604 and 605/Kol/2003 and C.O. Nos.55 and 56/Kol/2003 for the assessment years 1995-96 and 1996-97. Revenue has raised the following substantial questions of law for consideration :-

i) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal erred in law in deleting the order of CIT(A) and directing the Assessing Officer to allow the assessee's claim for deduction under Section 80HHC made on the basis of revised Auditor's Report filed in the course of the re-assessment proceedings ?

ii) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal erred in law in restoring the matter to the Assessing Officer to ascertain true nature, character and particulars of the interest received by the assessee both in its Calcutta Units as well as its Mumbai Units with regard to the deduction under Section 80HHC of the Income Tax Act, 1961 ?

We have heard Mr. Soumen Bhattacharjee, learned Standing Counsel appearing for the appellant/revenue and Mr. Vivek Murarka, learned Counsel appearing for the respondent/assessee.

As could be seen from the Memorandum of Grounds of appeal, the tax effect involved in the instant case for both the assessment years is Rs.63,06,845/- and Rs.18,24,864/- respectively. Therefore, the revenue cannot pursue this appeal on the ground of low tax effect. Accordingly, the appeal stands dismissed on the ground of low tax effect. Consequently, substantial questions of law are left open.

With the dismissal of the appeal, the stay application being GA/2/2021 (Old No.GA/2162/2011) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/pa.
AR(CR)