OD-6 & 7

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income tax)
ORIGINAL SIDE

IA NO. GA/1/2021
In
ITAT/173/2021
PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA
Vs.
ANANDA BAZAR PATRIKA PVT. LTD.

IA NO. GA/2/2021
In
ITAT/173/2021
PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA
Vs.
ANANDA BAZAR PATRIKA PVT. LTD.

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 24th FEBRUARY, 2022
[*Via Video Conference]*

Appearance:
Mr. Tilak Mitra, Advocate
Mr. Saumen Bhattacharjee, Advocate
…for the appellant.

Mr. J.P. Khaitan, Sr. Advocate
Mr. Agnibesh Sengupta, Advocate
Mr. Soumitra Datta, Advocate
…for the respondent.

The Court : - It appears there is a delay of 715 days in filing the appeal. We have perused the affidavit filed in support of the condone of delay application and find the reasons given for the inordinate delay are far from satisfactory. However, learned standing Counsel appearing for the appellant requested that the Court may consider the merits of the matter. The learned Counsel for respondent was also willing for such course being adopted.

Therefore, we exercise the discretion and condone the delay.

ITAT/173/2021

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated August 9, 2019 passed by the Income Tax Appellate Tribunal "B" Bench (Tribunal) in ITA No.1121/Kol/2007 for the assessment year 2003-04. The revenue has raised the following substantial questions of law for consideration:-

A. *Whether the Learned Tribunal has committed substantial error in law by directing the Assessing Officer to allow additional depreciation on assets purchased and acquired before 31.03.2002 as because as per Section 32(1)(iia) additional depreciation can only be availed when acquisition and installation of the machines were acquired through purchase before 31.03.2002 though installed after 31.03.2002 ?*

B. *Whether the Learned Tribunal has committed substantial error in law by allowing additional depreciation even after the machineries acquired before 01.04.2002 and installed after 01.04.2020, were not satisfied by the Assessee for eligibility of the claim ?*

We have heard Mr. Tilak Mitra, learned counsel duly assisted by Mr. Saumen Bhattacharjee, learned Advocate for the appellant/revenue and Mr. J.P. Khaitan, learned Senior Counsel with Mr. Agnibesh Sengupta and Mr. Soumitra Datta, learned Advocates for respondents/assessee.

The short question which falls for consideration in the case on hand is whether the assessee is entitled for additional depreciation under Section 32(1)(iia) of the Act. Earlier the revenue had challenged the order passed by the Tribunal in ITA No.313 of 2008. The said appeal of the revenue was allowed and the order passed by the Tribunal was set aside on the ground that there was absolutely no application of mind by the Tribunal to the evidence which was placed by the assessee and there was no discussion. Upon remand the Tribunal analysed the factual position and allowed the assessee's appeal and sustained the finding of the assessing officer allowing the claim for additional depreciation. On going through the impugned order more particularly in paragraph 15 we find the particulars regarding date of pro forma invoice, the date of original invoice, date of acquisition, date of installation as per certificate, date of entry in the books of accounts and the amount including insurance, installation etc. have been furnished in a tabular form. The Tribunal after going through the fact found that all the machinery have been purchased much after 1.4.2002. This factual position was in fact analysed by the assessing officer and the claim for additional depreciation was granted by order dated 30.11.2004 under Section 143(3) of the Act. Thus we find that on facts the Tribunal was convinced that the assessee would be entitled to the claim for additional depreciation in respect of the machinery which they have acquired, which has been used for the purpose of business. Furthermore, the assessee was able to establish that by installing the new machinery they have increased production capacity by more than 27%. Thus we find that there is no question of law, much less substantial question of law arising for consideration in this appeal.

Accordingly the appeal ITAT/173/2021 fails and is dismissed.

Consequently, connected application for stay stands closed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

GH/As.