OD-11

ITAT/119/2022
IA No.GA/1/2022,
GA/2/2022

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

PRINCIPAL COMMISSIONER OF
INCOME TAX, CENTRAL-1, KOLKATA

-Versus-

CORPORATE ISPAT ALLOYS LTD.

Appearance:
Ms. Smita Dsa De, Adv.
...for the appellant.

Mr. Iqbal Hussain Ansari,
...the Official Liquidator.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 14th November, 2022.

The Court: We have heard Ms. Smita Das De, learned standing counsel for the appellant/revenue and Mr. Iqbal Hussain Ansari, the Official Liquidator attached to this Court.

There is a delay of 926 days in filing the appeal.

On account of certain developments which have taken place during the pendency of the appeal and the matter having transferred to the National Company Law Tribunal (NCLT), we exercise discretion and condone the delay of 926 in filing the appeal.

Accordingly, the application for condonation of delay (IA No.GA/1/2022) stands allowed.

This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 9th August, 2019 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in IT(SS)A Nos.113 & 114/Kol/2017 for the assessment years 2010-11 and 2011-12.

The revenue has raised the following substantial questions of law for consideration:

(i) *Whether on the facts and circumstances of the case and in law, the learned Income Tax Appellate Tribunal erred in law by holding that deemed dividend provisions under Section 2(22)(e) of the Act would not apply in present case for the Assessment Years ? 2010-11 and 2011-12 ?*

(ii) *Whether on the facts and circumstances of the case and in law, the provisions of Section 2(22)(e) shall apply in this case, as the lending was made to the beneficial owner through shareholding for the Assessment Years 2010-11 and 2011-12 ?*

(iii) *Whether on the facts and circumstances of the case and in law, order of learned Income Tax Appellate Tribunal for the Assessment Years 2010-11 and 2011-12 is not maintainable as learned Tribunal has erred in relying on judgments, none of which has addressed the key issue regarding shareholders ?*

(iv) *Whether on the facts and circumstances of the case and in law, order of learned Income Tax Appellate*

Tribunal for the Assessment Years 2010-11 and 2011-12 is not maintainable as Learned Tribunal has erred in relying on judgments in which set of facts are completely different from present case ?

(v) *Whether on the facts and circumstances of the case and in law, learned Income Tax Appellate Tribunal has erred in deleting the addition made on account of unaccounted sell in the Assessment Year 2011-12 ?*

(vi) *Whether on the facts and circumstances of the case and in law, order of learned Income Tax Appellate Tribunal is perverse, in view of facts that the assessee has made unaccounted sell in the Assessment Year 2011-12 ?*

We have heard Ms. Smita Das De, learned standing counsel for the appellant/revenue and the Official Liquidator attached to this Court and perused the status report filed by the learned Official Liquidator. It is submitted by the learned counsel appearing for the appellant and the Official Liquidator that CP No.896/2016 which was initially filed before this Court has been transferred to the National Company Law Tribunal (NCLT) and the connected applications have also been transferred to the learned Tribunal. That apart, the claims have also been lodged by the department before the learned Official Liquidator. The copy of the order dated 7th November, 2022 passed in CP/896/2016 by the learned Single Bench shall be kept on record.

In the light of the said development, we are not required to decide the substantial question of law and while leaving the substantial question of law open, we grant liberty to the appellant/revenue to raise all pleas before the NCLT/Official Liquidator.

Accordingly, this appeal (ITAT/11//2022) stands disposed of.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./TR