

OD – 6

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

ITAT/153/2022
IA NO. GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX, ASANSOL
VS.
M/S. EASTERN COALFIELDS LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 27, 2022.

Appearance:
Ms. Smita Das De, Adv.
... for appellant
Mr. Rajeev Kumar Agarwal, Adv.
...for respondent.

GA/1/2022

The Court :- We have heard Ms. Smita Das De, learned standing Counsel for the appellant and Mr. Rajeev Kumar Agarwal, learned counsel for the respondent.

There is a delay of 511 days in filing the appeal. On perusal of the application we are satisfied that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation. The delay in filing the appeal is condoned. Accordingly, the application for condonation of delay is allowed.

ITAT/153/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated September 24, 2020 passed by the Income Tax Appellate Tribunal 'B' Bench Kolkata (Tribunal) in ITA Nos. 890 & 891 [Kol] of 2019 for the assessment year 2009-2010. 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 is justified in dismissing the appeal of the revenue and upholding the order of the Learned Commissioner of Income Tax [Appeal] in deleting the addition of Rs.22,43,24,000/- on account of “difference between opening and closing value of non-vendible coal” merely relying on the judgment of Learned Income Tax Appellate Tribunal for the assessment year 2008-2009 on the same issue wherein the learned Income Tax Appellate Tribunal has taken the value of this non-vendible coal as NIL based on its judgment in the assessee’s own case for the assessment years 2003-2004 to 2005-2006, despite the assessee company failed to substantiate the difference in closing and opening value and could not furnish any reliable and convincing material before the assessing officer ?
- (ii) Whether on the facts and circumstances of the case and in law the Learned Income Tax Appellate Tribunal is justified in dismissing the appeal of the revenue and upholding the order of the Learned Commissioner of Income Tax [Appeal] in deleting the addition of Rs.98,79,000/- on account of “less showing of stowing subsidy” despite the fact that the assessee company failed to submit any documentary evidences in this regard as the proof of subsidy received as recorded in the assessment order ?

We have heard Ms. Smita Das De, learned standing Counsel for the appellant and Mr. Rajeev Kumar Agarwal, learned counsel for the respondent.

So far as the first substantial question of law is concerned, the learned Tribunal has followed the decision in the assessee’s own case for the assessment year 2003-2004 to 2005-2006. We find that the revenue had preferred appeal before this Court in

ITAT/230/2017 and by judgment dated 14.12.2021 the appeal filed by the revenue was dismissed. The relevant portion of the judgment is as follows :

“11.The next issue is with regard to the addition on account of closing stock of coal. The CITA confirmed the order of the Assessing Officer on the ground that the assessee failed to produce any evidence to prove their contention that there is no saleable value or realizable value of the closing stock of coal. The assessee while challenging the finding contended that on the basis of technical evaluation of coal mixed with Matti the assessee company has valued such stock at NIL, since it is of the view that such coal is not saleable in the open market. The tribunal held that the assessee is justified in taking a decision whether coal mixed with Matti can be sold in the open market or whether it would fetch any price, if sold in the open market and the Income Tax Authorities cannot decide as to whether such coal can be sold in the open market or can be used for other purposes. Therefore, the tribunal held that the value of the coal as determined by the Assessing Officer does not have any basis and accordingly accepted the contention advanced by the assessee. Furthermore, the tribunal pointed out that the technical evaluation based on which the coal mixed with Matti etc. has been valued at NIL by the assessee has not been challenged as incorrect by the revenue authorities. Further it was pointed out that in the event of the coal being mixed with Matti, and any sum realized by the assessee on such sale the same would be offered to tax by the assessee under section 28 of the Act or the same sum brought to tax by the revenue under section 41 (1) of the Act.

12. We have perused the findings recorded by the tribunal on the other issues as well. The tribunal has proceeded to deal with the issues one after another. As noted above while dealing with each of the issue the tribunal has given the gist of the findings of the CITA who concurred with the Assessing Officer thereafter took note of the submissions of the assessee and decided the same for its correctness. While dealing so the tribunal considered the factual position in its entirety and granted relief to the assessee wherever admissible and permissible. Therefore, we are fully satisfied that the case before us is entirely factual and the materials which were available on record were re-examined by the tribunal and relief has been granted to the

assessee. The revenue cannot dispute the position of law that the tribunal is the last fact finding authority and this court exercising jurisdiction under section 260 A of the Act is not expected to reexamine the facts and record a different conclusion merely because it may be of the view that different conclusion would be appropriate. The jurisdiction under section 260 A of the Act is to ascertain as to whether any substantial question of law arises for consideration in the appeal and if it is so arises, then decide and answer the substantial questions of law one way or the other. As all the issues are entirely factual and we being satisfied that the tribunal has re-examined the facts and rendered the findings on the above issues after re-examining the records, we are not here to upset such factual findings under section 260 A of the Act.”

Thus, following the above decision, substantial question of law no.[i] is answered against the revenue.

So far as the second substantial question of law is concerned, we have perused the order passed by the Commissioner of Income Tax [Appeals], Asansol [CIT(A)] as well as the order passed by the learned Tribunal, the learned Tribunal has thoroughly examined the factual position and approved the finding rendered by the CIT(A). We find that this issue is entirely factual and no substantial question of law arises for consideration on the said issue.

In the result, the appeal filed by the revenue is dismissed. Consequently, the connected application for stay also stands dismissed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)