OD–16

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

ITAT/164/2022
IA NO: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX- 2, KOLKATA
VS.
M/s. ORIENT PAPER & INDUSTRIES LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 12, 2022.

*<u>Appearance</u>:*
*Ms. Smita Das De, Adv.*
*… for appellant*
*Mr. Pratyush Jhunjhunwala, Adv.*
*…for respondent*

***<u>GA/1/2022</u>***

The Court :- Heard Ms. Smita Das De, learned standing Counsel for the appellant and Mr. Pratyush Jhunjhunwala, learned Advocate for the respondent.

There is a delay of 202 days in filing the appeal.

We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation. Accordingly, the application is allowed and the delay in filing the appeal is condoned.

***<u>ITAT/164/2022</u>***

This appeal filed by the revenue under Section 260(A) of the Income Tax Act, 1961(the Act) was directed against the order dated 30.07.2021 passed by the Income Tax

Appellate Tribunal "A" Bench (Tribunal) in I.T.A. No. 2110/Kol/2019 for the assessment year 2015-16.

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

a) Whether on the facts and in the circumstances of the case and in law, the ld. Tribunal was justified in law to confirm the order of the Ld. C.I.T.(A) by allowing fresh claim of deduction to the assessee despite the fact that the assessee had failed to claim the said deduction by filing revised return?

b) Whether on the facts and in the circumstances of the case, the ld. Tribunal was justified in law in not appreciating the principles laid down in the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd., where is has held that the Assessing Officer is not empowered to entertain any fresh claim of deduction otherwise than by filing a revised return?

Heard Ms. Smita Das De, learned standing Counsel for the appellant and Mr. Pratyush Jhunjhunwala, learned Advocate for the respondent.

The short question which falls for consideration in the instant case is whether the claim for deduction on account of warrantee expenses which was filed claimed before the Assessing Officer could be claimed before the Commissioner of Income Tax (Appeal). On facts revenue has not disputed the payment of warrantee commission made by the assessee to the tune of 12,26,84,120/-. This has been recorded so by the learned Tribunal in paragraph 7 of the impugned order. That apart the learned Tribunal has noted the factual position that the assessee has not claimed warrantee expenses amount in the preceding year i.e. 2014-15. Furthermore, the Tribunal notes that the assessee has been consistently following the said method from the assessment year 2007-08 in respect fo the expenses relating to warrantee which has been accepted by the dep0artemnt. With regard to whether such a claim could be admitted by the CIT(A), though not raised before the assessing officer by filing the revised return was rightly considered by the Tribunal in favour of the assessee by taking note of the decision of the Supreme Court in *Goetze (India) Ltd Vs. CITA in 284 ITR 323 (SC).* This Court in the case of *PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA Vs. M/S. BIP DEVELOPERS PVT. LTD. in ITAT/165/2021 dated February 10, 2022* has taken a similar view and also the decisions of this Court in the case *PCIT VS. EASTERN COALFIELDS LTD.* in ITAT 96 of 2018 dated 4th January, 2022 and also the decision in *COMMISSIONER OF INCOME TAX Vs. BRITANNIA INDUSTRIES LTD.* reported in [2017] 396 ITR 677 (CAL).

Thus the Tribunal has rightly taken note of the legal position and dismissed the appeal filed by the revenue. Thus we find that there is no ground to interfere with the order passed by the learned Tribunal. Accordingly, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH