OD-24

ITAT/170/2022
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-2, KOLKATA

-Versus-

M/S. HIMADRI SPECIALITY
CHEMICALS LIMITED

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Saumya Kejriwal, Adv.
Ms. Ananya Rath, Adv.
Mr. G. S. Gupta, Adv.
... for the respondent.

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

Date : 31st October, 2022.

The Court: We have heard Mr. Prithu Dudheria, learned advocate for the appellant and Mr. J. P. Khaitan, learned senior counsel assisted by Mr. Saumya Kejriwal, Ms. Ananya Rath and Mr. G.S. Gupta, learned Advocates for the respondent.

There is a delay of 815 days in filing the appeal. Substantial period of the delay was during the lockdown and the remaining period is less than 50 days. Therefore, we exercise discretion and condone the delay in filing the appeal.

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

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 3rd January, 2020 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.1351/Kol/2019 for the assessment year 2012-13.

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

a) *Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal has erred in law in Foreign Exchange Fluctuation Loss on External Commercial Borrowings (ECB) loans taken by assessee mainly for purpose of purchasing capital goods without considering the fact that the assessee himself had capitalised Foreign Exchange Fluctuation Loss with capital goods purchased ?*

b) *Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal has erred in law in upholding the order of CIT (Appeals) whereby disallowing market to Marked Loss (MTM Loss) on foreign currency swaps while computing income u/s. 115JB, without considering the fact that assessee himself had added MTM Loss on account of foreign currency swaps, to his income calculated under normal provisions of Income Tax Act ?*

c) *Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal has erred in law in allowing deduction claimed u/s. 10B of Income Tax Act, while computing income from* *eligible unit under Chapter IV of Income Tax Act, and not at the stage of computing gross total income as per Chapter VI of Income Tax Act ?*

It is not disputed by the revenue that as against the order passed under Section 263, the revenue was in appeal before this Court in the case of Principal Commissioner of Income Tax, Central-1, Kolkata vs. Himadri Chemicals and Industries Ltd. passed in ITA/124/2021 and the same was dismissed by judgment dated 20th July, 2022. If that be the position, the present appeal cannot be independently pursued by the revenue. Furthermore, we note that substantial question of law No.(c) as raised in the appeal was not raised by the revenue in their appeal in ITA/124/2021.

In the light of the above, the revenue cannot pursue this appeal and no interference is called for against the order passed by the learned Tribunal.

Accordingly, the appeal (ITAT/170/2022) stands dismissed.

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

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das.