

OD-7

ITAT/420/2016
IA No.GA/1/2016 (Old No.GA/3451/2016)
IA No.GA/2/2016 (Old No.GA/3452/2016)

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

PRINCIPAL COMMISSIONER OF INCOME
TAX, KOL-1, KOLKATA

-Versus-

CHEVIOT COMPANY LIMITED

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

Mr. Avra Manumdar, Adv.
Mr. Binay Gupta, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 11th July, 2022.

IA No.GA/1/2016 :

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. Avra Majumdar, learned Advocate for the respondent.

There is a delay of 68 days in filing the appeal.

We are satisfied with the reasons given in the affidavit filed in support of the application for condonation of delay in filing the appeal. Therefore, we exercise discretion and allow

the application and condone the delay of 68 days in filing the appeal.

Accordingly, IA No.GA/1/2016 (Old No.GA/3451/2016) is allowed.

ITAT/420/2016:

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 20th January, 2016 passed by the Income Tax Appellate Tribunal, Kolkata, "A" Bench, Kolkata in ITA No.530/Kol/2012 for the assessment years 2003-04, ITA No./531/Kol/2012 for the assessment year 2004-05.

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

- i) *Whether on the facts and in the circumstances of the case the learned Tribunal was justified in law to quash the reassessment proceeding without considering the Explanation 2(c) to Section 147 of the said Act ?*
- ii) *Whether on the facts and in the circumstances of the case the learned Tribunal was justified in law in not considering the fact that the assessee company was not an eligible unit for availing exemption under Section 10B of the said Act especially when it had no valid certificate as contemplated in the Explanation 2(iv) to Section 10B of the said Act ?*

iii) Whether on the facts and in the circumstances of the case the learned Tribunal was justified in law in not considering the fact that the assessee company had neither included the EMA or Foreign Exchange Gain due to fluctuation in its total income in order to claim an exemption thereof ?

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. Avra Majumdar, learned Advocate for the respondent/assessee.

On perusal of the order passed by the tribunal we find that the tribunal rightly held that the reopening proceedings are wholly illegal and without jurisdiction. The tribunal noted the facts of the case and recorded the following finding:

"The AO while giving appeal effect to the order of the Tribunal accepted the assessee's contention and allowed the exemption under Section 10B of the Act including incentive i.e., receipts of EMA in such situation, whether the revenue on same set of facts can reopen the assessment by resorting to the provisions of Section 148 r.w.S. 147 of the Act ? Admittedly, in the present case the relevant A.Y. involved is 2003-04 and 2004-05 and in both the years' assessment were completed u/s.143(3) of the Act and matter travelled upto the Tribunal as noted in the reasons recorded by the A.O. in both the years. We find from assessment order framed u/s. 143(3) r.w.S.147 of the Act and consequent to that the order of CIT(A), there is no finding as such that there is any failure on the part of the assessee to disclose fully

and truly all material facts necessary for its assessment for the relevant assessment year.

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We find that the entire issue has been deliberated upon in first round by the AO, by CIT(A) and even by Tribunal on both the issues and exemption u/S. 10B of the Act and also exemption on receipts relating to EMA. Accordingly, we find that this issue is squarely covered in favour of the assessee and against revenue by the judgment of Hon'ble Supreme Court in the case of CIT vs. Kelvinator India Ltd. (2010) 310 ITR 561 (SC), wherein newly substituted provision of Section 147 of the Act w.e.f. 1.4.1989 is interpreted by observing that Section 147 of the Act, as substituted w.e.f. 1.4.1989 does not postulates conferment of power upon the AO to initiate reassessment proceeding upon his mere change of opinion."

Thus, the Tribunal after elaborately considering the factual position found that the identical issue was adjudicated and decided in the assessment proceedings under Section 143(3) of the Act and the reopening was wholly without jurisdiction. There is no perversity in the order passed by the tribunal for us to interfere.

In the result, the appeal filed by the revenue (ITAT/420/2016) stands dismissed on the ground that no substantial question of law arises for consideration.

Consequently, the connected application for stay IA No.GA/2/2016 (Old No.GA/3452/2016) also stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

As/S.Das
AR(CR)