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ITAT No. 154 of 2023
IA NO:GA/1/2023, GA/2/2023

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX, ASANSOL
VS
M/S. MAA LILORI ISPAT PVT. LTD.

BEFORE :

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 17th July, 2023

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

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated January 5, 021, passed by the Income Tax Appellate Tribunal, `A' Bench, Kolkata (Tribunal) in ITA No.1156/Kol./2019, for the assessment year 2013-14.

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 upholding the order of CIT(A) in deleting the disallowance of Rs.59,45,541/- made on account of delayed payment charge to DVC ?

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(A) in deleting the addition of Rs.4,81,56,985/- made on account of difference of liability shown in audit report of the assessee and the data submitted by the DVC ?

c) 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(A) in deleting the addition of Rs.83,40,692/- made on the grounds that this amount had already been incorporated in the figure of Rs.4,81,56,985/- whereas during the course of scrutiny proceedings the Assessee Company could not furnish explanation before the Assessing Officer ?

We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant/revenue.

There is a delay of 724 days in filing the appeal. Though the reasons given are not fully convincing, being conscious of the fact that this appeal has been filed under Section 260A of the Income Tax Act, we are not required to examine as to whether any substantial question of law arises for consideration. Therefore, we exercise discretion and condone the delay in filing the appeal. The application for condonation of delay is allowed.

As could be seen from the order passed by the learned Tribunal, there were four grounds, the first of which is with regard to the division of disallowance of Rs.59,45,541/- as was done by the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) took note of the decision of the Hon'ble Supreme Court in Prakash Cotton Mills Pvt. Ltd. vs. C.I.T, Central Bombay, wherein it was held that notwithstanding the nomenclature, it is necessary to find whether the penalty period is compensatory or penal in nature. The CIT(A) on facts found that the payments made by the assessee were not penalty but it was pursuant to an agreement between the assessee and the DVC on account of late payment of surcharge of electricity charges. With this reasoning, the CIT(A) deleted the disallowance, which factual finding was affirmed by the learned Tribunal. Therefore, we find no substantial question of law arising on the said issue.

The second issue is with regard to deletion of addition of Rs.4,81,56,985/- made on account of difference of liability shown in audit report of the assessee and the data submitted by the DVC. The learned Tribunal considered the correctness of the order passed by the CIT(A) and pointed out that the factual findings recorded by the CIT(A) could not be controverted by the department nor any material was placed to contradict the said findings. Therefore, we find this issue also is fully factual and no substantial question of law arises for consideration.

The third issue is with regard to deletion of addition of Rs.83,40,692/-. The CIT(A) reconciled the difference and granted relief which was approved by the learned Tribunal. Therefore, on this issue also, no substantial question of law arises for consideration.

The last issue is with regard to admission of additional evidence by the CIT(A) and all the papers, reconciliation statement etc. which were considered by the CIT(A) were before the Assessing Officer and this was factually established by the assessee before the learned Tribunal. Thus, on this issue also no substantial question of law arises for consideration.

For the above reasons, the appeal fails and is dismissed.

The stay application being GA/2/2023 accordingly is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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AR(CR)