OD-10

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

ITA/253/2009
IA NO. GA/1/2009 (OLD NO. GA NO.2543 OF 2009)

COMMISSIONER OF INCOME TAX, KOLKATA – IV
Vs.
MESSERS SIYAWALA EXPORTS PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 9th February 2023.

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

GA/1/2009

The Court : We have heard Mr. Prithu Dudheria, learned standing Counsel for the appellant.

There is a delay of 97 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence, the application is allowed and the delay in filing the appeal is condoned.

ITA/253/2009

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 30.1.2009 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in ITA no. 1868/Kol/2008 for the assessment year 2002-2003.

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

> *(a) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in upholding the order of Commissioner of Income Tax (Appeals) in allowing the claim of deduction of Rs.71,16,581/- under Section 10A of the Income Tax Act, 1961 and erred in not considering that the assessee failed to fulfill the condition precedent for claiming exemption under Section 10A of the Act ?*

As could be seen from the substantial question of law raised by the revenue the dispute is with regard to the claim of deduction of Rs.71,16,581/- and even assuming the stand of the revenue is accepted the tax effect will be well below the threshold limit of Rs. 1 crore. Therefore, the revenue cannot pursue this appeal.

Accordingly, the appeal stands disposed of on the ground of low tax effect and the substantial question of law is left open.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

R Bhar/GH.