OD–1

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

ITAT/252/2022
IA NO: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 1 KOLKATA
VS.
HALDIA PETROCHEMICALS LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th January, 2023

*Appearance* :
*Mr. Aryak Dutta, Adv.*
*Mr. Amit Sharma, Adv.*
*..for appellant*
*Mr. Ajay Gaggar, Adv.*
*Mr. Hiranyak Gangopadhyay, Adv.*
*…for respondent*

***GA/1/2022***

The Court : - Heard respective Counsel for either side.

There is a delay of 378 days in filing the appeal. From the relevant dates we find that the appellant department would be entitled to the benefit of the order passed by the Hon'ble Supreme Court extending the period of limitation for filing appeal under various Statutes. Hence, for such reason the application is allowed and the delay in filing the appeal is condoned.

***ITAT/252/2022***

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961, (the Act) is directed against the order dated 24.3.2021 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in ITA No. 2455/Kol/2019 for the assessment year 2008-2009. The revenue has raised following substantial questions of law for consideration :-

i) Whether in the facts and circumstances of the case and in law the Learned Tribunal exceeded its jurisdiction and erred in holding that re-opening of assessment is bad in law and in quashing the assessment order dated 21.01.2016?

ii) Whether in the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal has erred in quashing the reopening of assessment order under section 148 of the Act as bad in law thereby deleting the addition made on the basis of disallowance of Rs.6,92,90,000/- claimed on account of Provision of VAT ?

iii) Whether in the facts and circumstances of the case and in law the Learned Tribunal erred in holding that in the reason recorded for reopening there is no allegation of failure on the part of the assessee in AY 2008-2009 to truly and fully disclose material facts and also ignoring the fact that true and full facts are provided in the notes on accounts for subsequent Assessment Year 2009-10 and not in the subject Assessment Year 2008-09 which led the Assessing Officer to reopen the assessment ?

The short issue, which falls for consideration, is whether the reopening of the assessment was validly done. The learned Tribunal on going through the reasons for reopening recorded the findings on fact that there was no allegation made by the assessing officer that there was failure on the part of the assessee to truly and validly disclose material facts necessary for the assessment. We have perused the reasons for reopening which have been extracted in the assessment order dated 21.1.2016 passed under Section 147 read with Section 154 and Section 143(3) of the Act.

From the reasons it is evidently clear that material already available in the books of accounts have been re-apprised by the assessing officer and notice under Section 148 has been issued. The manner of such reopening has been frowned upon in several decisions as the fundamental principles of law is that the reason should disclose failure

on the part of the assessee to truly and validly disclose material facts necessary for the assessment. In the absence of any such allegations against the assessee the Tribunal was fully justified in re-appreciating the fact and coming to the conclusion that the reopening of the assessment was bad in law. Thus we find that there is no substantial questions of law arising for consideration in this appeal.

Consequently, the appeal fails and dismissed.

The application being GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.