O-13

ITAT/257/2022
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-1, KOLKATA

-Versus-

M/S. GUJARAT NRE COKE LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 6th February, 2023

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

Mr. Keshav Dutta, Adv.
Ms. Shalinee Basu, Adv.
...for the respondent.

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. Keshav Dutta, assisted by Ms. Shalinee Basu, learned Advocates representing the liquidator who has been appointed by the National Company Law Tribunal, Kolkata (NCLT).

There is a delay of 972 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay as well as the affidavit-in-opposition and we find that though the certified copy of the order passed by the Tribunal was received by the Department on 20th November, 2019, the appeal was preferred before this Court on 16th November, 2019. The delay is inordinate and unexplained. That apart, the revenue had preferred another appeal before this Court in ITAT/263/2022 in respect of the very same assessee for the assessment year 2012-13 which was dismissed by order dated 16th January, 2023 by assigning the following reasons:

> *"We have heard respective counsel for the either side.*
>
> *It appears that there is a delay of 944 days in filing the appeal. The certified copy of the order passed by the learned Tribunal was received by the department on 18.12.2019 but the appeal was filed before this Court only on 28.11.2022. On perusal of the affidavit filed in support of the condone delay petition, we find that though the Principal Commissioner of Income Tax (3), Kolkata approved the filing of appeal as early as on 21.2.2020, the appeal was filed on 28.11.2022. One of the reasons given in the affidavit filed in support of the condone delay petition that there was a restructuring in the department and the case was transferred to the Principal Commissioner of Income Tax (1), Kolkata on 20.10.2020 and it is thereafter the action was taken. Admittedly, the period of*

> *limitation for filing the appeal expired much prior to the outbreak of Covid and the imposition of lockdown. In any event, the restructuring of the department can hardly be a reason in not preferring the appeal within the period especially when the approval for filing an appeal given by the PCIT (3) much prior to the date of restructuring. Thus, we find that sufficient cause has not been shown for condonation of the inordinate delay for 944 days.*
>
> *For the above reason, the condone delay petition is dismissed. Consequently, the appeal stands rejected. The stay application also stands dismissed.*
>
> *Substantial questions of law as suggested by the revenue are left open."*

The so called reasons given by the appellant/department in the affidavit filed in support of the condonation of delay application is no different from what was stated in ITAT/263/2022, which we have already rejected.

Thus, we find that there is absolutely no ground made out by the appellant/revenue for condoning the inordinate delay of 972 days in filing the appeal. In the result, the application for condonation of delay (IA No.GA/1/2022) is dismissed.

Consequently, the appeal (ITAT/257/2022) stands rejected.

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

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das