OD–5

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

ITAT/274/2022
IA NO. GA/1/2022, GA/2/2022

PRINCIPAL COMMISSIONER OF INCOME TAX - 2, KOLKATA
VS.
M/S. WEST BENGAL INFRASTRUCTURE DEVELOPMENT FINANCE CORPORATION LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 16th January, 2023

<u>*Appearance*</u> :
Mr. Om Narayan Rai, Adv.
Mr. Prithu Dudhoria, Adv.
….for the appellant.

Mr.J.P. Khaitan, Sr. Adv.
Mr. Ananda Sen, Adv.
…for the respondent.

<u>GA/1/2022</u>

The Court : We have heard respective counsel for the either side.

There is a delay of 577 days in filing the appeal. Upon perusal of the affidavit filed in support of the condone delay petition, we find that sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence, the application being IA No.GA/1/2022 is allowed and the delay in filing the appeal is condoned.

<u>ITAT/274/2022</u>

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 07.12.2020 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (the Tribunal) in ITA No.

1509/Kol/2019 for the assessment year 2012-13. The revenue has raised the following substantial question of law for consideration:

a) Whether on the facts and circumstances of the case and in law, the ITAT erred in upholding the order of the CIT(Appeal) without appreciating the fact that assessment of the Assessing Officer is in line with the CBDT Circular no. 5/2014 dated 11.02.2014 which say that it is not necessary that exempt income should necessarily be included in a particular years income for disallowance to be triggered?

The short issue which falls for consideration is whether the Assessing Officer has recorded his satisfaction while disallowing a sum of Rs.15,60,72,830/- under Section 14A of the Act and invoking Rule 8D of the Income Tax Rules, for computation of the disallowance under Section 14A of the Act. The learned Tribunal upon perusal of the factual position affirmed the order passed by the Commissioner of Income Tax (Appeals) deleting the disallowance after noting certain decision of the Co-ordinate Bench of the Tribunal as also the decision of this Court in the case of *CIT vs. Ashika Global Securities Ltd.* dated 11.6.2018. We had an occasion to consider an identical issue in Keshoram Industries Ltd. vs. PCIT, 2022 441 ITR 648 [Cal] wherein it was pointed out as to how the power under Section 14A[2] read with Rule 8D could be invoked and it was held that the assessing officer needs to record satisfaction that having regard to the kind of the assessee suo moto disallowance under Section 14A was not correct and it will be in those cases where the assessee in his return has himself apportioned but the assessing officer did not accept the apportionment. In any event, the assessing officer will have to record its satisfaction to the said effect. On perusal of the assessment order dated 28.3.2015 passed under Section 143[3] of the Act we find that the assessing officer was not recorded any satisfaction for invoking Rule 8D of the Rules.

Thus, the learned tribunal rightly held in favour of the assessee and by affirming the view taken by the Commissioner of Income Tax [Appeals].

For the above reasons, the appeal filed by the revenue is dismissed and the substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/GH/Pkd/Sc.