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ITAT/276/2022
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. METALIND PVT. 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. S. M. Surana, Sr. Adv.
Mr. Bhaskar Sengupta, Adv.
...for the respondent.

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. S.M. Surana, learned senior counsel assisted by Mr. Bhaskar Sengupta, learned Advocate for the respondent/assessee.

There is a delay of 1209 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 filed by the respondent/assessee. Though the certified copy of the order passed by the Tribunal was received by the Department on 2nd May, 2019, but the appeal was preferred before this Court on 21st December, 2022.

On perusal of the dates and events given by the revenue, we find that there is no proper explanation for the inordinate delay. That apart, at the request made by the learned Advocates for the parties, we have also perused the order impugned before us and we find that the learned Tribunal considered the factual position and held that the Principal Commissioner of Income Tax should have made at least preliminary enquiry with regard to the claim of the assessee that the payment in question is reimbursement of expenditure to its joint venture partner and hence, no TDS needs to be made. The Tribunal rightly noted the decision of the Hon'ble Supreme Court in *G.E. India Technology Centre v. CIT* reported in 327 ITR 456 (SC) and held that when there is element of income in remittance, no deduction of tax at source need to be made.

Thus, in absence of any preliminary enquiry by the PCIT, the learned Tribunal was justified in allowing the assessee's appeal.

In the result, the application for condonation of delay (IA No.GA/1/2022) is dismissed and the appeal (ITAT/276/2022) stands rejected.

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

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das