OD – 10

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/13/2024
IA NO: GA/1/2024, GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX, FARIDABAD
VS
M/S. THE THIESS MINES (INDIA) PVT. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 31st January, 2024

Appearance :
Mr.Smarajit Roy Chowdhury, Adv.
Mr.Soumen Bhattacharjee, Adv.
...for the appellant.

The Court : There is a delay of 671 days in filing the appeal. Notice sent to the respondent has returned 'unclaimed'. Since this appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act), we are required to consider the substantial question of law arises for consideration. Therefore, we exercise our discretion and condone the delay in filing the appeal. This appeal is directed against the order dated 26th October, 2021 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata in ITA No.243/Kol/2020 for the assessment year 2014-15.

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

"*(a) Whether the Learned Tribunal has committed substantial error in law in allowing the expenses* *which are pre-operative expenses not allowable as expenses under Section 36 and 37 of the Income Tax Act, 1961?*

(b) Whether the Learned Tribunal has committed substantial error in law by not considering the matter in its own merit?"

We have heard Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant/revenue.

As could be seen from the order passed by the learned Tribunal, the identical issue arises in the assessee's own case for the assessment years 2012-13 and 2013-14 in which years the Commissioner of Income Tax (Appeals) granted partial relief to the assessee and such order was upheld by the learned Tribunal and the same has attained finality. Therefore, we find that the learned Tribunal was right in dismissing the revenue's appeal taking note of the fact that the issue raised stood finally concluded in favour of the respondent/assessee. Thus, we find that there is no question of law much less substantial question of law arising for consideration.

Hence, the appeal fails and the same is dismissed. The connected applications stand closed.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(SUPRATIM BHATTACHARYA, J.)

S.Das/