OD-2

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

ITAT/30/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF
INCOME TAX 1 KOLKATA
VS
M/S. GARDEN REACH SHIP
BUILDERS AND ENGINEERS LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 10th APRIL, 2024.

Appearance :
Mr. Vipul Kundalia, Adv.
Mr. Amit Sharma, Adv.
Mr. Anurag Roy, Adv.
...for appellant
Mr. Debasish Mitra, Adv.
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
...for respondent

The Court :- This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 20.11.2020 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (the Tribunal) in ITAT No. 1099/Kol/2018 for the assessment year 2013-14. The revenue has raised the following substantial questions of law for consideration :-

i) Whether the Learned Tribunal has substantially erred in law in setting aside the order passed under Section 263 of the Income Tax Act, 1961 without appreciating the facts of the case and considering that the assessment order is erroneous in so far as it is prejudicial to the interest of the revenue as the assessment order was passed without making any enquiry in respect of Corporate Social Responsibility expenditure to the tune of Rs.3,00,54,276/_ during the assessment year under consideration ?

ii) Whether the Learned Tribunal has substantially erred in law in setting aside the order under Section 263 of the Income Tax Act, 1961 passed by the Principal Commissioner of Income Tax by ignoring the fact that Corporate Social Responsibility expenditure to the tune of Rs.3,00,54,276/- for the assessment year under consideration was not allowable expenditure as the same was not incurred for the purpose of the business of the respondent assessee?

iii) Whether the Learned Tribunal has substantially erred in law in setting aside the order under Section 263 of the Income Tax Act, 1961 passed by the Principal Commissioner of Income Tax by ignoring the fact that Corporate Social Responsibility expenditure to the tune of Rs. 3,00,54,276/- for the assessment year under consideration was not allowable under Section 37 of the Income Tax Act, 1961?

We have heard Mr. Vipul Kundalia and Mr. Amit Sharma learned Counsel appearing for the appellant and Ms. Swapna Das and Mr. Siddhartha Das, learned Counsel appearing for the respondent.

The present appeal is hopelessly barred by time as there is a delay of 976 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find no acceptable reasons for condoning the inordinate delay in filing the appeal. However, since the learned standing Counsel for the appellant submitted that merits of the matter may kindly be looked into before taking a decision on the application for condonation of delay and he will make the endeavor to convince the Court that there exists a substantial question of law for consideration and in such circumstances the Court will be inclined to condone the delay. We have heard the learned Counsel for respondent/assessee on the above submission.

The question which falls for consideration before learned Tribunal was whether the expenses incurred by the assessee, which as it was claimed was CSR expenses was admissible as the deduction under Section 37(1) of the Act. The Tribunal on going through the records has found that the assessing officer has considered the issues called for explanation from the assessee and thereafter accepted the various stands taken by the assessee. PCIT issued show cause notice calling upon the assessee to explain as to why the power under Section 263 of the Act could not be invoked. The assessee submitted a detailed reply bill supported with facts and figures. Nevertheless, the PCIT concluded that no enquiry was conducted by the assessing officer and the assessing officer has to verify each of the expenses which have been incurred by the assessee and claimed as CSR expenses.

Aggrieved by such order, the assessee filed the appeal before the learned Tribunal and the Tribunal on going though the facts of the case has allowed the bill. Firstly, with regard to the allegation in the order passed under Section 263 of the Act, that no enquiry was conducted by the assessing officer, we find that the learned Tribunal upon going through the documents placed has recorded a factual finding that the assessing officer has called for and obtained reasons for the CSR expenses incurred by the assessee and the said explanation given by the assessee before assessing officer was in fact reiterated before the PCIT in response to the notice issued under Section 263 of the Act. Thus the Tribunal on fact concluded that it is not a case of no enquiry and nor it is a case of non-application of mind. This factual finding cannot be dislodged in an appeal filed under Section 260A of the Income Tax Act, where we are required to answer substantial questions of law for consideration. With regard to the admissibility of the expenses under Section 37(1) of the Act, the Tribunal has taken note of the decision in the case of *Hindustan Copper Limited Vs. CIT, LTU-1 dated 29.01.2020***,** the facts of the said case is also on the similar line as in the said case the assessee was a public sector undertaking and certain directives issued by the Government of India was followed by the assessee. There are two notifications issued by the Government of India, the first of which is by Office Memorandum dated 21.06.2011, wherein the expenses incurred by public sector undertakings in the form of fee charged for participation in CSR Training Programme/Workshops or for sponsorship of Workshops/programmes organized by Tata Institute of Social Sciences etc. will be allowed to be included under the CSR Budgets of Central Public Sector Enterprises. The other notification is dated 1st November, 2011 which stipulates the guidelines on Corporate Social Responsibility for Central Public Sector Enterprises. Admittedly, the respondent assessee has complied with the said directives issued by the Government of India. Furthermore, identical issue was considered by this Court in the case of *Principal Commissioner of Income Tax Vs. Ramesh Prasad Sao; [2023] 155 taxmann.com, 256 (CAL),* wherein the assessee company was engaged in iron ore mining and it incurred periphery development expenses for territorial welfare as well as welfare of local people in the area in which mines were operating as per the direction of the local administration and such CSR expenses incurred by the assessee prior to the assessment year 2015-16 were held to be liable as business expenditure as same was wholly and exclusively incurred for the purpose of business. In the case of *Principal Commissioner of Income Tax Vs. Steel Authority of India Limited; [2023] 148 taxmann.com 132(Del)* the Court took into consideration more or less same facts and circumstances concerning a public sector undertakings and allowed the CSR expenses. Thus on facts we are convinced that the expenses were allowable more so, when the respondent assessee is a public sector undertaking and they had carried out a notification and they had implemented the notifications issued by the Government of India. The specific case of the assessee was that they incurred the expenditure for facilitating the business of construction and repair of ships mainly for Indian Navy and they were required to take up certain activity for the benefit of people residing in the said locality.

Thus, we are of the view that the matter is entirely factual and no substantial question of law arises for consideration and, therefore, the application for condonation of delay as well as the appeal stands dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)

pkd/GH.