OD–8

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

ITAT/49/2024
IA No: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX - 1, KOLKATA
VS.
M/S. TCG DIGITAL SOLUTIONS (P) LIMITED

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 11th March, 2024

<u>*Appearance*</u> :
Mr. Vipul Kundalia, Adv.
Mr. Amit Sharma, Adv.
...for appellant
Mr. Pratyush Jhunjhunwalla, Adv.
Ms. Sretapa Sinha, Adv.
...for respondent

The Court : We have heard Mr. Vipul Kundalia, learned standing Counsel appearing with Mr. Amit Sharma, learned Advocate for the appellant department and Mr. Pratyush Jhunjhunwalla, learned Counsel for the respondent assessee.

There is a delay of 1367 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find there is no acceptable explanation for the inordinate delay except for stating certain administrative grounds. Further, on perusal of the order passed by the learned Tribunal, impugned in this appeal, we find that the learned Tribunal has taken note of the decision of the coordinate Bench of the Tribunal in the case of Almatis Alumina Pvt. Ltd. The correctness of the said decision was challenged by the revenue before this Court and in the case of Principal Commissioner of Income-Tax vs. Almatis Alumina Pvt. Ltd., reported in (2022) 445 ITR 632 (Cal) the appeal filed by the Department was dismissed. Apart from that, with regard to the Indian Transfer Pricing guidelines issued by the Institute of Chartered Accountants of India vide guidance note on report under section 92E by ICAI and transfer pricing guidelines issued by OECD the issue was whether it prohibits a foreign associate enterprise (AE) to be a tested party. This issue was considered by this Court in the case of Principal Commissioner of Income-tax 1 vs. ITC Infotech India Ltd., reported in (2024) 159 taxmann.com 323 (Calcutta).

Thus, we find that apart from there being no explanation for the inordinate delay, the legal issue raised in this appeal is squarely covered in the aformentioned decisions. Hence, the application for condonation of delay is dismissed. Consequently, the appeal stands rejected.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)

SN.
AR(CR)