OD-3, 4, 5

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/125/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 1,KOLKATA
VS
M/S. TCG URBAN INFRASTRUCTURE HOLDINGS PVT LTD.

ITAT/126/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 1,KOLKATA
VS
M/S. TCG URBAN INFRASTRUCTURE HOLDINGS PVT LTD.

ITAT/127/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 1,KOLKATA
VS
M/S. TCG URBAN INFRASTRUCTURE HOLDINGS PVT LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 15th May, 2024.

Appearance :
Mr. Tilak Mitra, Adv.
Mr. Prithu Dudhoria, Adv.
...for appellant.
Mr. Pratyush Jhunjhunwala, Adv.
...for respondent.

The Court :- In all these appeals, there is a delay in filing the appeals which is more than 700 days. The learned Tribunal had disposed of the appeals filed before it by the department as well as the assessee by a common order and allowed the case of the assessee.

Aggrieved by the same, the department had earlier filed two appeals before this Court in ITAT 72 of 2024 for the assessment year 2004-05 and ITAT 73 of 2024 for the assessment year 2007-08. Both the appeals were dismissed by orders dated 11.03.2024 and it would be useful to refer to the order passed in ITAT 72 of 2024 which reads as follows:-

"There is a delay of 713 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. At the request of the learned Advocates for the parties, we have also examined the facts of the case and the findings rendered by the learned Tribunal. 2 Considering the grounds which are urged before the Tribunal in comparison with the substantial questions of law raised in this appeal, we find there is a discrepancy in the amount of disallowance and expenses as made by the Assessing Officer as contested by the revenue before the Tribunal. We have examined the order passed by the learned Tribunal and we find that the entire issue is completely factual. The facts as brought on record by the Commissioner of Income Tax (Appeals) were reconsidered by the Tribunal and the same were affirmed. Apart from that the Tribunal has taken note of the decisions of various High Courts which clearly support the case of the assessee.

Thus, we are not persuaded to exercise any discretion in favour of the appellant revenue. Accordingly, the application for condonation of delay is dismissed. Consequently, the appeal stands rejected."

The present appeals are for the assessment years 2005-06, 2006-07 and 2009-10. As mentioned earlier, there is a delay of more than 700 days in all the appeals and there is no proper explanation given by the department for condoning such inordinate delay. That apart as observed in ITAT 72 of 2024, quoted above the Tribunal has taken note of the decisions of the various High Court and allowed the appeal of the assessee and those decisions clearly support the case of the assessee.

Thus, on fact we are not persuaded to exercise any discretion in favour of the appellant/revenue. Accordingly, the application for condonation of delay is dismissed. Consequently, the appeals stand rejected.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.