O-22

ITA/199/2009

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
ORIGINAL SIDE

HINDUSTHAN NATIONAL GLASS & INDUSTRIES LIMITED

-Versus-

COMMISSIONER OF INCOME TAX, KOLKATA- II

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 15th January, 2024

Appearance:
Ms. Swapna Das, Adv.
...for the appellant

Mr. Smita Das De, Adv.
...for the respondent.

The Court : Heard learned counsel for the appellant/assessee and learned standing counsel for the respondent/department.

Learned counsel for the appellant states that in the matter of the assessee in ITAT/74/2022, this Court passed the following order:

> "*The Court : There is a delay of 769 days in filing the appeal.*
>
> *On perusal of the relevant dates we find that the appellant/revenue be entitled to the benefit of the order passed by the Hon'ble Supreme*

Court extending the period of limitation for preferring appeals under various statutes.

For such reason the application is allowed and the delay is condoned.

ITAT/74/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act for brevity) is directed against the order dated 31.12.2019 passed by the Income Tax Appellate Tribunal "C" Bench (Tribunal) in ITA/Kol/2018 for the assessment year 2012-13.

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

i) Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal erred in deleting the adjustment of Rs.6,04,61,794/- made by the Assessing Officer/Transfer Pricing Officer for International Transaction in respect to the corporate guarantee to its Associated Agencies ?

ii) Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal erred in ignoring the fact that the corporate guarantee extended by the assessee company to its Associated Agency is an international transaction as per explanation to Section 92B with ret4rospective effect from 01/04/2002 and accordingly an arm's length Charge should be computed in relation to the same ?

iii) *Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal erred in not appreciating that the corporate guarantee has provided benefit to the Associated Agency and the assessee should have charged a fee for its services in the form of guarantee charge ?*

iv) *Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal erred in not appreciating that by providing corporate guarantee, subsidiary's creditworthiness increases and hence postulates provision of services by holding company ?*

v) *Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal erred in deleting the addition made u/s 14A of the Act read with Rule 8D of the Income Tax Rules, 1962 ?*

vi) *Whether on the facts and in the circumstances of the case and in law the Learned Income Tax Appellate Tribunal erred in considering miscellaneous income as eligible deduction u/s 80IC ?*

We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned Advocate appearing for the respondent. The learned Advocate appearing for the respondent submitted that as against respondent/assessee proceedings have been initiated under the provisions of the Insolvency & Bankruptcy Code and the National Company Law Tribunal has

> *appointed Insolvency Resolution Professional and Moratorium has been granted. To the said effect the order dated 21st October 2021 in the matter of DBS BANK VS. HINDUSTHAN NATIONAL GLASS AND INDUSTRIES LTD. has been placed before this Court which shall form part of the record.*
>
> *In the light of the above development the revenue cannot proceed with this appeal.*
>
> *Accordingly, the appeal stands disposed of for the aforementioned reasons.*
>
> *Application being GA/2/2022 stands closed.*
>
> *Consequently, the substantial questions of law are left open."*

She submits that the present appeal may also be disposed of in terms of the aforequoted order.

In view of the aforesaid and with consent of learned counsel for the parties, this appeal (ITA/199/2009) is disposed of in terms of the aforequoted order passed in ITAT/74/2022 (Principal Commissioner of Income Tax-2, Kolkata v. M/s. Hindusthan National Glass & Industries).

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

As.