OD-22

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

ITAT/272/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX
1,KOLKATA
VS
INFINITY INFOTECH PARKS LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 19TH APRIL, 2024.

Appearance :
Mr. Vipul Kundalia, Adv.
Mr. Amit Sharma, Adv.
....for appellant
Mr. Pratyush Jhunjhunwala, Adv.
Mr. S. Rudra, Adv.
Ms. Sreetapa Sinha, Adv.
....for respondent

The Court :- We have heard learned Counsel on either side.

It appears that there is a delay of 940 days in filing the appeal. The delay is vehemently opposed by respondent assessee apart from that the assessee by filing an affidavit in opposition and in the said affidavit the assessee has set out the following facts to condone the delay. This appeal filed by the revenue has become infructuous. For better appreciation the averments made in the said affidavit in opposition is quoted hereinbelow:-

"g] I state that the order dated December 18, 2020, passed by the Tribunal is actually in favour of the revenue department as the Tribunal upheld the finding of the Principal Commissioner of Income Tax with respect to the maintainability of the proceedings under section 263 of the Act. I state that the revenue department cannot be aggrieved by the direction of the Tribunal asking the Assessing Officer to independently examine the matter without being affected by the working provided by the Principal Commissioner of Income Tax and consider subsequent decisions for the assessment year 2009-10, is in accordance with law and just. I state that the appellant has failed to consider and appreciate that in proceedings under section 263 of the Act the Assessing Officer cannot be handed over a loaded dice but has to independently examine the issue again and that any submission opposing the aforesaid proposition is wholly arbitrary, erroneous and contrary to law.

h] I state that the Assessing Officer in his give effect order dated September 30, 2021, erroneously disallowed the claim for carry-forward loss and computed the disallowance at Rs.5,90,10,694/- which was much more than the claim actually made by the respondent assessee. Further, I state that the Assessing Officer failed to consider and appreciate the order dated October 30, 2019 passed by the Commissioner of Income Tax [Appeals] which was binding upon him and was also contrary to the direction given by the tribunal in its order dated December 18, 2020. I state that the failure to consider the order dated October 30, 2019 and the incorrect computation were errors apparent on the face of the record and as such the respondent assessee preferred an application under section 154 of the Act for rectification of the aforesaid errors. I state that during the pendency of the application under section 154 of the Act, the Tribunal's order dated June 16, 2022, for the assessment year 2009-10 had been issued wherein the appeal of the revenue department was dismissed. Further, the Assessing Officer had himself passed the aforesaid necessary order dated July 7, 2022 giving effect to the said order of CIT[A] dated October 30, 2019 and computed the carry-forward loss for the assessment year 2009-10 to be Rs.19,10,76,892/- thereby making the entire loss of Rs.3,99,13,429/- available to the respondent assessee for set-off in the assessment year 2015-16.

I state that the Assessing Officer by his order November 16, 2022 allowed the aforesaid claim of carry-forward of loss of Rs.3,99,13,429/- in the assessment year 2015-16 as a result of which no dispute remains thereby rendering the instant appeal to be infructuous. Copies of the orders dated September 30, 2021 and November 16, 2022 are annexed hereto and are collectively marked "D". I state that for the convenience of this Hon'ble Court, a chronology of events has been prepared providing in brief, the facts and list of dates for the assessment years 2009-10 and 2015-16 and a copy of the same is annexed hereto and marked "E".

The above facts are not in dispute and it is seen that much prior to the impugned order passed by the Tribunal dated 18.12.2020 the order was passed by the CIT[A] dated 30.10.2019 by computing the carry-forward loss for the assessment 2009-10 to be Rs.19,10,76,892/- and making the entire loss of Rs.3,99,13,429/- available to the assessee for set-off in the assessment year 2015-16. The Assessing Officer by an order dated 16.11.2022 allowed the claim of carry-forward loss of Rs.3,99,13,429/- for the assessment year 2015-16.

Thus, as noted above, the present appeal has been filed by the revenue only on 11.3.2023. Thus, nothing survives for adjudication in the appeal and the same is dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.