

OD-9

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

ITAT/137/2021
IA NO: GA/1/2021, GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
VS.
M/S. BRITANNIA INDUSTRIES LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 16th January, 2023

Appearance :
Mr. Prithu Dhudheria, Adv.
..for appellant
Mr. R. K. Murarka, Sr. Adv.
Ms. Arathika Roy, Adv.
...for respondent

The Court : - Heard respective Counsel for either side.

There is a delay of 879 days in filing the appeal.

For the assessment years under consideration namely, AY 2009-10, 2010-11 and 2011-12 was completed on 23.3.2013. The assessee filed appeal before the Commissioner of Income Tax [Appeals] and the appeal was allowed on 28.3.2017. Against the said order the department preferred appeal before the tribunal in June 2017 and the appeal was dismissed and the certified copy of the order passed by the tribunal was received by the department on 22.11.2018. the last day for filing the appeal within the period of limitation was 12.4.2019. However, the appeal was filed before this court only on 7.9.2021.

We have elaborately heard the learned counsel for the parties and perused the affidavit filed in support of the condone delay application and the affidavit in opposition. On perusal of the relevant dates we find that the delay between 4.4.2019 and 5.3.2020, the date on which the learned advocate for the department had drafted the appeal petition has not been explained, the delay of more than 110 days. Thereafter for a

period of 11 months there was lockdown. Subsequently, after a period of about seven and half months the Ministry of Law had send the papers to the Income Tax Department. It is stated that prior to that there was change of jurisdiction in the Income Tax Department during August, 2020 and this also contributed to the delay of another 16 and half months. It is stated that the original certified copy of the order passed by the learned tribunal was misplaced. There is no explanation as to where the original certificate copy got misplaced or steps taken by the department to trace the original certified copy.

It is submitted by the learned senior counsel for the respondent/assessee that the assessee has made inquiry with the registry of the tribunal and they have been informed that not only the department is served with the true copy of the certified copy of the order but also the Commissioner of Income Tax [Appeals] as well as the assessing officer. Therefore, it is clear that the department was not diligent in taking effective steps to file the appeal. Thereafter, it appears that the department applied for a fresh certified copy of the order on 17.3.2021 after a period of six and half months and the certified copy was made ready by the registry of the tribunal on 9.4.2021. However, it took three months for the department to collect the certified copy from the registry of the tribunal and after about nearly a delay of two months the appeal was preferred on 7.9.2021.

Thus, we find that there is no proper explanation given for the inordinate delay for us to exercise any discretion in favour of the appellant/revenue.

For such reason, the application for condonation of delay is dismissed. Consequently, the appeal stands rejected and the substantial questions of law suggested by the revenue are left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.