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

P R E S E N T:

THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

ITAT/177/2021
IA NO.GA/1/2021

PRINCIPAL COMMISSIONER OF INCOME TAX - 1, KOLKATA
VS.
M/S. BEEKAY STEEL INDUSTRIES LIMITED

ITAT/177/2021
IA NO.GA/2/2021

PRINCIPAL COMMISSIONER OF INCOME TAX - 1, KOLKATA
VS.
M/S. BEEKAY STEEL INDUSTRIES LIMITED

Appearance :
Mr. Saumen Bhattacharya, Adv.
... for the appellant

Mr. Subhas Agarwal, Adv.
..for the respondent

Heard on : 25.01.2022

Judgment on : 25.01.2022

T.S. SIVAGNANAM, J. :- We have heard Mr. Soumen Bhattacharyya, learned standing counsel for the appellant/revenue and Mr. Subhas Agarwal, learned counsel appearing for the respondent/assessee.

It appears that there is a delay of 985 days in filing this appeal. We have perused the affidavit filed in support of the petition for condonation delay and we find that there is no satisfactory explanation for condoning such huge delay. Nevertheless, the learned counsel for the parties were agreeable to argue the main appeal, itself, therefore, we exercise discretion and condone the delay. Accordingly the delay in filing the appeal is condoned.

The petition for condonation of delay is allowed and disposed of.

ITAT 177 of 2021

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 20th November, 2018 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (Tribunal) in ITA/954/Kol/2017 for the assessment year 2012-13.

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

1. Whether the Learned ITAT has committed substantial error in law in not considering that under the provision of Section 43B of the Income Tax Act, 1961 certain payment should be allowed to be claimed as an expenses only in the year in which they have been paid and not in the year in which the liability to pay such sums was incurred.
2. Whether the Learned ITAT erred in law and failed to appreciate the term, object and purpose of the provisions contained in Section 263 of the Income Tax Act, 1961, by passing the impugned order.

We have heard Mr. Soumen Bhattacharyya, learned standing counsel for the appellant/revenue and Mr. Subhas Agarwal, learned counsel appearing for the respondent/assessee.

The question before the Tribunal was whether the Principal Commissioner of Income Tax – 1, Kolkata was justified in invoking its power under Section 263 of the Act. The assessee was issued a show-cause notice under Section 263 of the Act calling upon them to explain as to why the assessment order should not be revised/modified or set aside on the ground that a certain sum of money had been debited towards excise duty of finished goods and the same amount had been shown under the head “Short Term Provision” in the balance sheet as on 31st March, 2012. Further it was stated

that as per annexure –X, the Tax Audit Report shows payment of excise duty to the extent of only Rs.30,45,000/- before the due date for submitting the return. Therefore, the Commissioner proposed that the remaining amount of Rs.5,43,76,924/- was required to be paid back. The assessee submitted reply dated 20th February, 2017. However, the Commissioner was not satisfied with the reply and confirmed the proposal in the show-cause notice issued under Section 263 of the Act, consequently set aside the assessment order dated 30th March, 2015 and directed the assessing officer to pass a fresh assessment order. Pursuant to such direction the assessing officer gave effect to the direction by passing an assessment order dated 17th July, 2017. The learned standing counsel for the appellant/revenue would draw our attention to the giving effect of the order dated 17th July, 2017 and submits that the excise duty liability cannot be allowed as deduction since it was not actually paid by the assessee during the relevant year. The assessee challenged the order passed by the CIT by filing an appeal before the Tribunal. The Tribunal took note of the submission that the assessee has made provision for excise duty or closing stock of finished goods in respect of various divisions and proceeded to examine the central excise returns and not stopping with the certificate issued by the Tax Auditor in the Audit Report. This exercise was done by the Tribunal to satisfy itself as to whether payments have been effected or adjusted against the available input

credit of the respective division. This finding of the Tribunal would be relevant.

> "From the said excise returns, we find that the total excise duty payable on closing stock of finished goods in the sum of Rs.5,74,21,924/- minus sums paid to the extent of Rs.30,45,000/- i.e. Rs.5,43,76,924/- got adjusted with available input credit in the respective divisions which effectively tantamount to constructive payment made by the assessee in the next financial year but before the due date of filing return of income u/s 139(1) of the Act."

After noting the factual issue, the Tribunal also considered as to whether the CIT was justified in observing as to whether the assessing officer failed to conduct any enquiry. The Tribunal considered the paper book filed by the assessee and found that the assessing officer had issued a questionnaire dated 11th November, 2014 along with the notice under Section 142(1) of the Act and sought for calculation of valuation of closing stock and the relevant details were furnished by the assessee along with the letter dated 13th February, 2015 and thereafter the assessing officer having been convinced on the said working, did not make any addition or disallowance under Section 43(B) of the Act on the subject issue. Thus, we find that the Tribunal has rightly taken note of the Central Excise returns and noted that one of the units of the assessee was engaged only in job work activity and therefore, not entitled for benefit

of input credit and after taking note of the sum paid on the said account, the Tribunal also found that the balance amount was adjusted with the available input credit in the respective divisions which undoubtedly would tantamount to actual payment of excise duty. Thus, we find that the Tribunal rightly granted relief to the assessee and the order does not call for any interference.

In the result the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

(T. S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)