OD-8

ORDER SHEET

ITAT 179 of 2019
GA 2589 of 2019
GA 2590 of 2019

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

COMM OF INCOME TAX TDS KOLKATA
Versus
M/S. VODAFONE EAST LIMITED
(NOW AMALGAMATED WITH VODAFONE MOBILE SERVICES LIMITED)

BEFORE:
The Hon'ble JUSTICE I. P. MUKERJI
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 12th March, 2020.

Appearance:
Mr. S.N. Dutta, Adv.
Mr. Asok Bhowmik, Adv.

Mr. J.P. Khaitan, Sr. Adv.
Mr. A. Sengupta, Adv.
Mr. Indranil Banerjee, Adv.

The Court: This is an appeal under Section 260A of the Income Tax Act, 1961.

The revenue involved in this appeal is over Rs.3 crores as per submission of learned counsel for the parties.

The question involved is whether payment to the distributors in prepaid SIM cards is a discount or commission and whether it would attract Section 194H of the Income Tax Act, 1961.

There is a delay of 586 days in filing the appeal.

Learned counsel for the revenue acted with due diligence, in our opinion, inasmuch as on 3rd April, 2018 the judicial folder was sent by the Income Tax department to the Ministry of Law and Justice for preparing the appeal. 4th April, 2018 was the last date for preferment of the appeal.

The very next day after receiving the folder, the Ministry of Law and Justice handed over the file to learned counsel for preparation of the appeal. On 9th April, 2018 learned counsel handed over the drafts to the Ministry of Law. Had the appeal been expeditiously filed thereafter, there would have been a delay of not more than two weeks in filing it.

However, the appeal papers after moving through various departments of the government for scrutiny, approval and so on, was ultimately filed on 13th November, 2019. There is no explanation for this delay.

Although Mr. Dutta, learned advocate for the appellant contends that considering the issue involved we should condone the delay, we are of the view that even if some explanation was offered, we could have exercised our discretion. In this case, condonation of the delay would amount to condoning the utter failure or negligence on the part of the department to take steps with regard to this appeal.

Accordingly, this Section 5 application (GA 2589 of 2019) is dismissed.

Consequently, the appeal (ITAT 179 of 2019) and the stay application (GA 2590 of 2019) are also dismissed.

(I. P. MUKERJI, J.)

(MD. NIZAMUDDIN, J.)

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