HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A.NO.4 OF 2015

DATED:26.2.2015

Between:

The Commissioner of Income-tax-III, Hyderabad.

… Appellant.

And

Sree Rayalaseema green Energy Limited, Aswathapuram,
Pondipadu Village, Kurnool.

… Respondent.

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A.No.4 OF 2015

JUDGMENT: (per the Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

By the impugned judgment and order dt.30.9.2009, two appeals in relation to assessment years 1996-1997 to 2001-2002 and from 01.04.2001 to 07.03.2002 (Block Period), and also in relation to assessment year 2001-2002 have been disposed of by the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad. The present appeal is sought to be preferred and admitted by the Revenue, against the impugned judgment relation to the assessment of the block period, on the following suggested questions of law.

1. *"Whether, on the facts and in the circumstances of the case, the order of the Tribunal is perverse?*
2. *Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law, in setting aside the order of the Commissioner of Income Tax passed under Section 263 of the Income Tax Act?"*

We have heard learned counsel for the appellant and gone through the judgment and order of the learned Tribunal. It appears, the learned Tribunal has set aside the action taken by the Commissioner of Income Tax, under Section 263 of the Income Tax Act, 1961 (for short 'the Act'). The learned Tribunal on fact found that the Assessing Officer has taken one possible view, which is legally acceptable. However, the Commissioner of Income Tax in exercise of the power under Section 263 of the Act wanted to substitute his own views. Based on this fact, the learned Tribunal came to a conclusion that this exercise of jurisdiction is not legally permissible. We find that settled position of law has been followed by the learned Tribunal on appreciation of fact and hence we do not want to substitute our own view.

The appeal is accordingly dismissed. There will be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

26.2.2015

BNR / GJ