

OD – 2 & 3

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

IA NO:GA/1/2017 [OLD NO:GA/357/2017]
IN
ITAT/41/2017

PRINCIPAL COMMISSIONER OF INCOME TAX KOL-4, KOLKATA
VS
VANTAGE ADVERTISING PVT. LTD.

IA NO:GA/2/2017 [OLD NO:GA/358/2017]
IN
ITAT/41/2017

PRINCIPAL COMMISSIONER OF INCOME TAX KOL-4, KOLKATA
VS
VANTAGE ADVERTISING PVT. LTD.

BEFORE :

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

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: November 18, 2021.

Appearance :

Mr. Sunity Chatterjee, Adv.
Mr. M. Bandyopadhyay, Adv.
... for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunhunwalla, Adv.
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
...for respondent.

Re: IA NO:GA/1/2017 [OLD NO:GA/357/2017]

The Court : This application has been filed by the Revenue for condonation of delay of 470 days in filing the appeal. The explanation offered by the Revenue is far from being satisfactory.

Nevertheless being conscious of the fact that we have to decide an appeal under section 260A of the Income Tax Act, we have briefly heard the learned counsel for the parties on merits and we find that out of the four assessment years, which are subject matter of this appeal, three of the assessment years the tax effect is below the threshold limit and, therefore, the Revenue cannot prosecute the appeal and this leaves us with only the assessment year 2009-2010. The Tribunal has followed an earlier decision of this Court in respect of the said assessment year. Therefore, we exercise discretion and condone the delay in filing the appeal.

The application thus stands allowed.

Re: IA NO:GA/2/2017 [OLD NO:GA/358/2017] In ITAT/41/2017

This appeal filed under section 260A of the Income Tax Act, 1961 [The Act, in brevity] is directed against the composite order dated 10.3.2015 passed by the Income Tax Appellate Tribunal “A” Bench Kolkata in ITA Nos. 1389 to 1392/Kol/2012 for the assessment years 2006-07, 2007-08, 2008-09, and 2009-10. The Revenue has raised the following substantial questions of law for consideration :

1. Whether on the facts and in the circumstances of the case, the learned Tribunal erred in holding that Bus Shelter, foot over bridge etc. come within the ambit of infrastructure facility as defined in clause [a] of Explanation below sub-section [4] of section 80IA of the Income Tax Act ?

2. Whether on the facts and circumstances of the case, the learned Tribunal erred in facts as well as in law in holding that the profits and gains from advertisement on hoarding will fall within the ambit of expression “ derived from infrastructure facility” as defined in section 80IA of the Income Tax Act in particular the Explanation appended to sub-section [4] of section 80IA ?
3. Whether on the facts and circumstances of the case, the learned Tribunal erred in not accepting the principle laid down in the case of CIT-III Bangalore vs. Skyline Advertising Pvt. Ltd. reported in 45 Taxmann 532[2014] Karnataka though the issue is squarely covered by the said judgement of the Hon’ble High Court of Karnataka ?
4. Whether on the facts and circumstances of the case, the learned Tribunal erred in deciding the issue of allowability of deduction under section 80IA of the Act in favour of the assessee and against the Revenue without considering the Tax Audit Report which specifically mentions that the nature of business of the assessee is advertising which does not qualify for exemption under section 80IA [4] ?
5. Whether on the facts and circumstances of the case, the learned Tribunal erred in allowing 100% depreciation in hoardings which have been put to use for less than 180 days in place of 50% as per section 32 [1] of Income Tax, 1961 ?

6. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal is correct in allowing depreciation @ 100% on hoardings treated as temporary structures as against the treatment given by the Assessing Officer as plant and machinery allowing depreciation at 15%?

The substantial questions of law nos.1 to 4 all concern the same issue as to whether the assessee was entitled for deduction under section 80IA of the Act. Therefore, a combined decision can be taken on these four questions. The remaining two questions are with regard to the depreciation on the hoarding and temporary structures erected by the assessee.

We have heard Mr. Chatterjee, learned senior standing counsel appearing for the appellant and Mr. Khaitan, learned senior counsel appearing for the respondent.

The present appeal filed by the Revenue is against a composite order passed by the Tribunal for four assessment years, namely, 2006-07, 2007-08, 2008-09, and 2009-10. It is submitted by learned senior standing counsel for the Revenue that the appeal in respect of the assessment years 2006-07, 2007-08, and 2008-09 are below the threshold tax limit as stipulated by the CBDT in its circular. If that is so, the Revenue cannot pursue the appeal in respect of the said assessment years and, accordingly, the appeal stands dismissed, in so far as the assessment years 2006-07, 2007-08, and 2008-09.

For the assessment year 2009-10 we have considered the submission on either side and we find that two fact finding Authorities, namely, The Commissioner of Income Tax [Appeals] and the Tribunal considered the fact and have returned the finding on merits. The Revenue's contention is that the assessee is only an advertising firm putting banner for their own purpose and, therefore, the question of claiming of any deduction under section 80IA of the Act would not arise. This appears to be factually incorrect as is seen from the order passed by the CIT [A] as well as the Tribunal where the Tribunal has clearly held that the assessee is engaged in infrastructure development which involves construction of foot over bridge as well as the bus shelter and, therefore, the assessee is entitled to deduction under section 80IA of the Act. The Tribunal followed the decision of this Court in the case of *Commissioner of Income Tax, Kolkata-IV, Kolkata vs. Selvel Advertising Pvt. Ltd.*, ITA 49 of 2010 dated 22.4.2010 which was also a similar matter wherein an advertising company engaged in infrastructure development has erected automatic traffic signal and pedestrian foot over bridge and the question was whether this would constitute infrastructure development as contemplated in clause [a] of the Explanation to sub-section [4] of section 80IA of the Act. The Division Bench by the said judgement had upheld the decision rendered by the Tribunal and dismissed the Revenue's appeal. This decision has attained finality. Therefore, we are of the view that the decision of the Tribunal in so far as the claim of deduction made by the assessee under section 80IA of

the Act requires to be sustained. Accordingly, substantial questions of law nos.1 to 4 are answered against the Revenue.

So far as the substantial question of law no.5 is concerned, in assessee's own case for the assessment year 2005-06, the decision was rendered in favour of the assessee and though the Revenue has filed appeal before this Court in ITA 334 of 2009 but this was not one of the substantial questions of law, which has been admitted for consideration. Thus it goes without saying that the decision in respect of the substantial question of law no.5 has been accepted by the Revenue. Accordingly, the said question is also decided against the Revenue.

So far as the substantial question no.6 is concerned, the question is covered by the decision of the assessee's own case in *Principal Commissioner of Income Tax, Kolkata-IV vs. Vantage Advertising Pvt. Ltd.*, ITA 55 of 2018 with ITA 183 of 2018 dated 31.7.2019 following the same substantial questions of law was decided against the Revenue. In the result, the appeal fails and dismissed and the substantial questions of law are answered against the Revenue in so far as the assessment year 2009-10.

The stay petition is also dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)