OD-2

ORDER SHEET

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

IA NO:GA/2/2017
(OLD NO: GA/314/2017)
In
ITAT/36/2017

PRINCIPAL COMMISSIONER OF INCOME TAX-3, KOLKATA
Vs.
SICPA INDIA LTD.

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : December 10, 2021.

[Via Video Conference]

Appearance:
Mr. Tilak Mitra, Adv.
Mr. Radhamohan Roy, Adv.
... for the appellant/Revenue

Mr. Somak Basu, Adv.
... for the respondent/assessee

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against an order dated 9th March, 2016 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata, in I.T.A. No. 36/Kol/2012 for the assessment year 2002-03 and C.O. No.05/Kol/2012 in I.T.A. No. 36/Kol/2012 for the assessment year 2002-03.

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

(i) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law by treating the reassessment order passed under Sections 147/143(3) of the Income Tax Act, 1961 as bad in law in the case of the assessee for the Assessment Year 2002-2003 in deleting the disallowance of Rs.45,17,787/- ?

(ii) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law by quashing the finding of the Assessing Officer that 25% of the Royalty payment was capital in nature in view of the decision of the Hon'ble Supreme Court in the case of Southern Switch Gear Ltd. vs. CIT and Another, reported in 232 ITR 359 (SC) ?

We have heard Mr. Tilak Mitra, learned Standing Counsel for the appellant/revenue and Mr. Somak Basu, learned Counsel appearing for the respondent/assessee. The learned Counsel for the respondent/assessee even on the earlier occasion pointed out that the appeal could not be pursued by the revenue on the ground of low tax effect. The matter was adjourned to enable the appellant/department to examine the said submission. Today when the matter is taken up for hearing the learned Standing Counsel for the revenue has drawn our attention to the computation done by the Assessing Officer in his order of assessment dated 27th December, 2009 and it is submitted that tax effect in this appeal is Rs.20,10,147/-. If that is the factual position, then the appeal cannot be pursued with by the revenue on the ground of low tax effect. In the light of the said submission, the appeal stands disposed of on the ground of low tax effect.

In the event, the revenue is of the opinion that still the appeal is to be pursued as it may come under any one of the exclusion clauses in the circular issued by the CBDT, we, however, grant liberty to the revenue to file an application for restoration of this appeal, if the appeal is not hit by CBDT circular of low tax effect.

Consequently, the substantial questions of law are left open.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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