OD-19

ORDER SHEET

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

IA NO: GA/2/2018
(Old No. GA/542/2018)
IN
ITAT/49/2018

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA – 2, KOLKATA
VS.
WEST BENGAL INFRASTRUCTURE DEVELOPMENT FINANCE CORPORATION LIMITED

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon’ble JUSTICE HIRANMAY BHATTACHARYYA

Date : December 17, 2021.

[Via Video Conference]

Appearance:
Mr. Suniti Chatterjee, Advocate
… for the appellant

Mr. J.P. Khaitan, Sr. Advocate
Mr. Ananda Sen, Advocate
… for the respondent

The Court : This appeal by the revenue has been filed under Section 260A of the Income Tax Act, 1961 (the ‘Act’ in brevity) challenging the order dated 2nd June, 2017 passed by the Income Tax Appellate Tribunal “C” Bench, Kolkata in ITA 2209/Kol/2014 for the assessment year 2011-12.

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

a) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, “C” Bench Kolkata erred in law in holding that disallowance under Section 14A of Income Tax Act, 1961 read with Rule 8D of Income Tax Rules, 1962 should be restricted to only those investments which yielded dividend income, through which CBDT Circular 5/2014 dated February 11, 2014 has been held to the illegal or ultravires?

We have heard Mr. Suniti Kumar Chatterjee, learned standing counsel for the appellant/revenue and Mr. J P Khaitan, learned senior counsel with Mr. Ananda Sen, learned counsel appearing for the respondent.

The short issue involved in this appeal is whether the Commissioner of Income Tax (Appeals) was right in upholding the disallowances made under Section 14A read with R.8D of the Income Tax Rules, 1962 only in respect of investment which yielded and exempted, the Tribunal after considering the facts and circumstances of the case and also noting the legal position that the assessing officer while making a disallowance under Section 14A read with R.8D of the rules is bound to record his satisfaction to the correctness of the claim of disallowance in respect of exempted dividend income.

We have perused the assessment order dated 29th January 2014 under Section 143(3) of the Act. The assessing officer notes that on perusal of the return of income filed by the assessee they have earned dividend net income to the tune of Rs.1,46,349/- which is exempted from tax and assessee has disallowed Rs.33,32,576/- under Section 14A of the Act. The assessing officer merely states that the same is not convincing. This is not the manner in which suo motu disallowance made by the assessee should be decided for its correctness nor can it be treated to be recording of the satisfaction of the assessing officer. This aspect of the mater was rightly taken note by the CIT(A) as well as the Tribunal. On fact also the Tribunal has upheld the order passed by CIT(A) wherein the CIT(A) has noted the submission made by the assessee that by computing the average value of investment for the purpose of R.8D income from which do not form part of the total income namely cumulative preference shares of Haldia Petro Chemical and investment in SBI–SDFS, Units Growth Mutual Fund from which no dividend income had accrued to the assessee during the financial year 2010-2011 corresponding to the assessment year 2011-12. This submission was elaborated by the assessee during the course of appeal by the CIT(A) and which has been extensively noted by the CIT(A). That apart identical issue was the subject matter of consideration for the assessment year 2010-2011, wherein relief was granted to the assessee. This aspect was also noted by the CIT(A) while passing the order in the appeal and directing the assessing officer to reduce the disallowance in terms of directions contained therein. The correctness of the order was tested by the Tribunal and in our view rightly rejected the appeal filed by the revenue. Thus we find no reason to interfere with the order passed by the Tribunal.

Hence, the appeal filed by the revenue is dismissed.

Consequently, the connected application stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH.