OD-14

ITAT/52/2018
IA No.GA/2/2018 (Old No.GA/550/2018)
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX-3, KOLKATA
VERSUS
M/S. T.M. INTERNATIONAL LOGISTICS LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 15th December, 2021

Appearance :-

Mr. Debasish Chowdhury, Adv.
... For Appellant
Mr. Pratyush Jhunjhunwalla, Adv.
Ms. Swapna Das, Adv.
... For Respondent

The Court : This appeal by the revenue filed under Section 260A of the Income Tax, 1961 (the Act, for brevity) is directed against the order dated 17th March, 2017 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No. 988/Kol/2013, and Cross Objection in C.O. No.74/Kol/2013 for the assessment year 2009-10.

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

i) Whether on the facts and the circumstances of the case, the Learned Income Tax Appellate Tribunal, "B" Bench, Kolkata, erred in law in deciding the appeal in favour of the assessee by deleting the disallowance of Rs.14,25,000/- under Section 40(a)(ia) of the Act in respect of commission paid to the non-executive director by ignoring the fact that the proposed amendment to Section 40 was to take effect retrospectively from 1st April, 2010 and accordingly, was supposed to apply in relation to the Assessment Year 2010-11 ?

ii) Whether on the facts and the circumstances of the case, the Learned Income Tax Appellate Tribunal, "B" Bench, Kolkata, erred in law in deciding the appeal in favour of the assessee by deleting the disallowance of Rs.2,76,60,137/- ignoring the fact that the same was an unascertained contingent liability and hence, not allowable as a business expenditure ?

We have heard Mr. Debasish Chowdhury, learned Standing Counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwalla, learned Counsel with Ms. Swapna Das, learned Advocate appearing for the respondent/assessee.

Learned Counsel for the respondent/assessee submitted that the appeal will be hit by the Circular issued by the CBDT as the tax effect is lower than the threshold limit. It is contended that in the petition filed by the revenue for condonation of delay in filing this appeal, in paragraph 3 at page 7 of the affidavit the tax effect has been mentioned at Rs.98,86,038/-. Learned Advocate for the respondent has provided us a calculation, which also tallies with what has been mentioned by the revenue in their condone delay petition.

Therefore, the present appeal is dismissed on the ground of low tax effect keeping the substantial questions of law left open.

The application being GA/2/2018 (Old No.GA/550/2018) is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/mg
AR(CR)