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

IA No.GA/1/2017
(Old No. GA/1327/2017)
In
ITAT/155/2017

PRINCIPAL COMMISIONER OF INCOME TAX, KOLKATA-1, KOLKATA
Vs
WEST BENGAL STATE ELECTRICITY TRANSMISSION CO. LTD.

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

Date : December 13, 2021.
(Via Video Conference)

Appearance:
Mr. Debasish Chowdhury, Adv.
Mr. Asok Bhowmick, Adv.
… for the appellant/Revenue

Mr. Pronit Bag, Adv.
Mr. Soumyadeep Biswas, Adv.
… for the respondent/assessee

The Court : This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 (the ‘Act’ in brevity) is directed against the order dated 21st October, 2016 passed by the Income Tax Appellate Tribunal, ‘C’ Bench, Kolkata in ITA No. 1005/Kol/2013 for the assessment year 2008-09. The Revenue has raised the following substantial questions of law for consideration :

i) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law in quashing the revision order under Section 263 of the Income Tax Act, 1961 on the issue of assessee's claim of additional depreciation of Rs.19,26,87,056/- when the assessee was neither engaged in business of generation and distribution of power nor engaged in the business of manufacture or production of any article or thing in relation to assessment year 2008-09?

ii) Whether the finding of facts given by the Learned Tribunal was perverse and based on surmises when the Assessing Officer had not made an enquiry of verification on the assessee's claim of additional depreciation in the course of assessment proceedings?

We have heard Mr. Debasish Chowdhury, learned standing counsel appearing for the appellant/Revenue.

The short issue involved in this case is whether the Commissioner of Income Tax was justified in exercising its powers under Section 263 of the Act. This issue was considered by the Tribunal on facts and on facts, the Tribunal found that material evidence was available on record and from the assessment orders and file, it was evident that the Assessing Officer verified the entire aspect of claim of depreciation which includes additional depreciation and accordingly, granted relief. Further the Tribunal on perusal of the statement of computation of total income found that this fact was clearly evident in the statement. Therefore, the Tribunal concluded that adequate enquiry was conducted by the Assessing Officer in the assessment proceedings. Hence, we find that the conclusion of the Tribunal is right, namely, when enquiry has already been made on the issue, the same cannot be subject matter of revision under Section 263 of the Act. Therefore, we find that there is no error in the order passed by the Tribunal. Accordingly, the appeal stands dismissed. The substantial questions of law are answered against the Revenue.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH.