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

IA No.GA 1 of 2017 (Old No. GA 1326 of 2017)
In
ITAT 153 of 2017

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA -1
Vs
M/S. HOOGHLY MILLS PROJECTS LIMITED

BEFORE:

The Hon'ble JUSTICE T. S. SIVAGNANAM
AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 17th November, 2021.

Appearance:
Mr. S.N. Dutta, Adv.
...for the appellant.

Mr. Asim Chowdhury, Adv.
...for the respondent.

The Court : Heard Mr. S.N. Dutta, learned Counsel appearing for the appellant/Revenue and Mr. Asim Chowdhury, learned Counsel appearing for the respondent/assessee.

This appeal of Revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 26th October, 2016 passed by the Income Tax Appellate Tribunal, A-Bench, Kolkata (the 'Tribunal') in ITA No.549/Kol/2011 for the assessment year 2006-07.

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

- a) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal, "A" Bench, erred in law in holding that the disallowance of Rs.4,10,00,000/- was not a case of deemed dividend u/s 22(2)(e) despite the fact that as the balance

sheet of the assessee company, it was holding more than 10% of the shares of the loan creditor company?

- b) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal, “A” Bench, erred in law in holding that disallowance of Rs.1.70 Crores with regards to employees’ contribution was not called for on account of delay in deposit of employees’ contributions beyond the specified date?

It is not disputed before us by the Revenue that identical substantial questions of law in the assessee’s own case for the assessment year 2005-06 were considered by the Hon’ble Division Bench in ITA No.97 of 2011 and by judgment dated 13.06.2016 the appeal was dismissed and the questions were answered against the Revenue. The said judgment reads as follows:

“The appeal is directed against a judgment and order dated 17th September, 2010 passed by the Income Tax Appellate Tribunal, Bench-C, Kolkata in ITA 914/Kol/2010 pertaining to the assessment year 2005-06 by which the appeal preferred by the assessee was allowed and the order under Section 263 was set aside. The aggrieved revenue has come up in appeal. The following question of law was formulated at the time of admission of the appeal:

I. Whether the learned Tribunal below committed substantial error of law in setting aside the order under Section 263 of the Income Tax holding the same is not erroneous and prejudicial to the interest of the Revenue, notwithstanding the fact that the same Bench in the case of M/s. Hooghly Mills Project Ltd. in ITA No.913/Kol/2010 has held that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue.

II. Whether the learned Tribunal below committed substantial error of law in canceling order under Section 263 of the Act wherein the assessment was set aside on the grounds of failure to make enquiry and addition under Section 36(i)(v)(a) read with Section 2(24)(x) of the Act on account of

Employees' Contribution to Provident Fund due to non-deposit of contribution within the date to the appropriate authority.

Mr. Khaitan, appearing for the assessee submitted that the first question is unmeritorious. In the case of Hooghly Mills Projects Ltd. the point of applicability of Section 2(22)(e) was raised on the basis that the shareholding was more than 10%; whereas in the case before us, the shareholding is restricted to 5.27%. Therefore, there was no question of applicability of any deemed dividend.

In so far as the second question is concerned, he pointed out that the payment of arrear provident fund was in accordance with the order passed by the High Court. The same practice, as a matter of fact, he added, had been continuing for some time. In respect of one of the earlier years, the assessing Officer had disallowed the payment of provident fund though made in pursuance of order of Court, but subsequently that was allowed by the CIT(Appeal). He, therefore, submitted that both the questions raised by the revenue are without any substance.

Mr. Sinha, learned Advocate appearing for the revenue is unable to dispute any of the submissions advanced by Mr. Khaitan. In that view of the matter, both the questions are answered in the negative and against the revenue. The appeal, is, thus dismissed.”

In the light of the above decision which binds the Revenue, the present appeal cannot be entertained. Accordingly, the appeal stands dismissed and the substantial questions of law are answered against the Revenue.

The stay application being IA No.GA 1 of 2017 (Old No.GA 1326 of 2017) also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)