OD-31

ITAT/65/2021
IA No.GA/2/2021

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

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA

-Versus-

M/S. SUVARNA COMMERCIAL PVT. LTD.

Appearance:
Mr. P. K. Bhowmick, Adv.
...for the appellant.

Mr. Vikash Singh, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 17th December, 2021.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 22nd November, 2019 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the 'Tribunal' in short) in ITA No.2099/Kol/2018 for the assessment year 2010-11.

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

(i) *Whether in the facts and circumstances of the case and in law Learned Income Tax Tribunal was justified in quashing the rectification u/s. 154/143(3) of the Act, 1961 passed by the AO without appreciating the fact that AO has rightly added the disallowance u/s. 14A r.w. Rule 8D of Rs.58,29,976/- while computing book profit u/s. 115JB of the Income Tax Act, 1961?*

We have heard Mr. P. K. Bhowmick, learned counsel for the appellant/revenue and Mr. Vikash Singh, learned counsel for the respondent/assessee.

The learned counsel appearing for the respondent/assessee submits that the appeal cannot be pursued on account of low tax effect. However, it appears that there is no written instruction given by the Department to the learned Counsel for the revenue. Therefore, we have considered the merits of the matter and we find that the Tribunal rightly held that disallowance made under Section 14A of the Act read with Rule 8D of the Rules, 1962 is only artificial disallowance and obviously the same is not debited in the profit and loss account and the same cannot be improved into Clause (f)of Explanation 2 to Section 115JB of the Act. furthermore, the Tribunal while affirming the order passed by the CIT(A) noted that the Assessing Officer has not discussed anything in the order of assessment by making additions/disallowance of expenses under Section 14A read with Rule 8D to determine book profit under Section 115JB and has passed order under Section 154 of the Act recomputing the book profit under Section 115JB of the Act. This was held to be not legally sustainable.

We find that there is no error committed by the Tribunal warranting interference of the order impugned. Accordingly, the appeal (ITAT/65/2021) fails and is dismissed. Consequently, the substantial question of law is answered against the revenue.

The connected application for stay (IA No.GA/2/2021) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das