Form No.(J2)

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

Present :

The Hon'ble JUSTICE T. S. SIVAGNANAM

A N D

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

ITAT No. 151 of 2017
Arising out of
IA No. GA 2 of 2017
(Old No. GA 1323 of 2017)

PRINCIPAL COMMISIONER OF INCOME TAX-4, KOLKATA
VS.
M/S. AKZO NOBLE INDIA LIMITED

Mr. Debasis Choudhury, Advocate
Mr. Madhu Jana, Advocate
... for the appellant

Mr. Vishal Karla, Advocate
Mr. Avra Mazumder, Advocate
... for the respondent

Heard on : 07.12.2021

Judgment on : 07.12.2021

T. S. SIVAGNANAM, J.: This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 (the Act in brevity) is directed against the composite order dated 27th November, 2015 passed by the Income Tax Appellate Tribunal, "B" Bench Kolkata in ITA Nos. 850 and

1021/Kol/2007 and ITA Nos. 2048 and 2355/Kol/2005 for the assessment year 1996-97. The Revenue has raised the following substantial questions of law for consideration :

1. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in allowing the deduction of liability on account of the provision of leave encashment which has not fallen due within the financial year 1995-1996 corresponding to Assessment Year 1996-1997?
2. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in allowing the deduction of Voluntary Retirement Scheme (VRS) payments which is payable in future years and not crystallized expenditure of this year is in the nature of provision to meet the future liability?
3. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in holding the consideration received on sale proceeds of assessee's chemical undertaking is not liable to tax as short term capital gain under Section 50 of the Income Tax Act or as long term capital gain?

We have heard Mr. Jana, learned standing counsel appearing for the Revenue and Mr. Vishal Karla, learned counsel assisted by Mr. Mazumder for the respondent/assessee.

So far as substantial questions of law Nos. 1 and 2 are concerned, the Tribunal rightly took note of the decision of the Hon'ble Supreme Court in Metal Box Company of India Ltd. Vs. Workmen (1969) 73 ITR 53 SC which was followed by the Hon'ble Supreme Court in Bharat Earth Movers Vs. CIT [2000] 245 ITR 428 SC. Therefore, we find there is no error in the order passed by the Tribunal. Hence, question Nos. 1 and 2 are decided against the Revenue. In so far as substantial question of law No. 3 is concerned, in assessee's own case in ITAT 31 of 2018 dated 24th November, 2021, we have dismissed the Revenue's appeal and decided the question in favour of the respondent/assessee. Thus, following the said decision, the substantial question No. 3 is also answered against the Revenue. In the result, the appeal filed by the Revenue is dismissed and all the three substantial questions of law are answered against the Revenue.

Consequently, stay application stands dismissed.

(T. S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

GH/RS