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

IA No.GA/1/2018 [OLD NO:GA/2158/2018]
In
ITAT 188 of 2017

VESUVIUS INDIA LIMITED
Vs
ASST. COMMISSIONER OF INCOME TAX

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 24th November, 2021.

Appearance:
Mr. J. P. Khaitan, Sr. Adv.,
Mr. Sounak Basu, Adv.
…for the appellant.

Mr. P. K. Bhowmick, Adv.
…for the respondent.

The Court : This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961 [the Act, in brevity] is directed against the order dated 28th December, 2016 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata [The Tribunal] in ITA No.613/Kol/2011 for the assessment year 2003-04". The assessee has raised the following substantial questions of law for our consideration.

a. Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in denying the claim of the appellant that profits and gains of business of the undertaking eligible for deduction under Section 80-IB shall be re-computed by considering only the income and expenditure having direct and immediate nexus to the said undertaking ?

b. Whether on the facts and in the circumstances of the case and in law and without prejudice to 7[a], the Tribunal erred in denying the claim of the appellant that profit and gains of business of the undertaking eligible for deduction under Section 80-IB shall be re-computed by excluding net of other income instead of gross of other income ?

We have elaborately heard Mr. Khaitan, learned senior counsel appearing for the appellant and Mr. Bhowmick, learned senior standing counsel appearing for the respondent/revenue. The Tribunal by impugned order dated 28th December, 2016 granted partial relief to the assessee but in so far as certain grounds, which were canvassed by the appellant/assessee the Tribunal did not take a decision in the matter but held those grounds to have become infructuous and they do not require any adjudication. The correctness of such order is being tested. To be noted that the Tribunal on the major issue, which was canvassed before it, on law held in favour of the assessee and for the purpose of computation the matter has been remanded back to the Assessing Officer. The submission of the learned counsel for the appellant assessee is that the other two grounds, which have been canvassed by the assessee would also form integral part of the main ground, which was canvassed before the Tribunal and the assessee never gave up those grounds of challenge. For consideration of the said submission of the learned counsel, we take note that the grounds, which were canvassed by the assessee before the Tribunal, which are quoted herein below:

" 2[a]. That on the facts and in the circumstances of the case, the Ld. CIT[Appeals] was not justified rather grossly erred in excluding other income comprising of commission of Rs.5,09,000/- interest from bank of Rs.8,72,000/-, interest from others of Rs.46,73,000/- and miscellaneous income of Rs.6,34,000/- in computing profits and gains of business of the undertaking eligible for deduction u/s. 80IB.

2[b]. That on the facts and in the circumstances of the case, the Ld. CIT[Appeals] erred in facts and law in denying the claim of the appellant to exclude net of the aforesaid other income and not gross of the aforesaid income from the profits and gains of business of the eligible undertaking.

2[c]. That on the facts and in the circumstances of the case and without prejudice to Ground No.2[a] and 2[b] taken here-in above, the Ld. CIT[Appeals] erred in not re-computing profits and gains of business of the undertaking eligible for deduction u/s 80IB by considering only the income and expenditure attributable to the said undertaking."

As mentioned above, the ground no.2[a] [supra] has been decided in favour of the assessee in respect of the two items, namely, interest from others to the tune of Rs.46,73,000/- and sale of scrap, namely Rs.6,34,000/. After having held that there is merit in the submission of the assessee as the proposition canvassed by them are supported with the judgments of the Hon'ble High Courts and the Hon'ble Supreme Court, the Tribunal remanded the matter to the Assessing Officer with a direction to examine the interest from others and miscellaneous income and the Assessing Officer was directed to give relief to the assessee in the light of the judicial pronouncements referred to in paragraph 6.4 of the order passed by the Tribunal. If such relief is granted by the Tribunal to the assessee, we find no justifiable reason for having rejected the grounds 2(b) and 2(c) as having become infructuous. The Tribunal has not assigned any reason as to why and in what manner those two grounds have become infructuous. In any event, whether the claim made by the assessee to exclude net of the aforesaid other income and not gross of the aforesaid income from profits and gains of business of the eligible undertaking is also required to be considered by the Assessing Officer and this will form integral part of the computation directed to be done by the Tribunal by remanding the matter to the Assessing Officer. Furthermore, the assessee's specific case was that the Commissioner of Income Tax [Appeals] had committed an error in not re-computing the profits and gains of business of the undertaking eligible for deduction under section 80IB by considering only the income and expenditure attributable to the said undertaking. This ground also will form integral part of the ground no.2[a] of the grounds and the same is required to be considered by the Assessing Officer as to whether those grounds raised by the Assessing Officer are justifiable and legally tenable. Therefore, we are of the view that on remand while the Assessing Officer would comply with the direction issued by the Tribunal he shall also examine the grounds raised by the assessee, being ground no.2[b] and 2[c] [supra]. The assessee is at liberty to place all materials in support of their contention and thereafter the Assessing Officer shall redo the assessment in accordance with law.

With the above observation, the appeal stands partly allowed. Consequential substantial questions of law are left open.

Stay application, GA/2158/2018 stands disposed of accordingly.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pkd