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

IA No.GA 2 of 2017 (Old No. GA 1873 of 2017)
In
ITAT 221 of 2017

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL 4, KOLKATA
VS
GRAPHITE INDIA LIMITED

BEFORE:

The Hon'ble JUSTICE T. S. SIVAGNANAM

AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 14th December, 2021.

Appearance:

Mr. Suniti Kumar Chatterjee, Adv.

...for the appellant.

Mr. Sounak Basu, Adv.

...for the respondent.

The Court : This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) and is directed against the order dated 9th November, 2016 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA No.539/KOL/2010 and ITA No.598/KOL/2010 for the assessment year 2005-06.

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

- i) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law to hold waiver of sales tax loan to be capital in nature inspite of the fact that the sales tax itself is a revenue item and therefore any waiver relating thereto shall be in the nature of revenue ?

We have heard Mr. Chatterjee, learned Counsel appearing for the appellant/Revenue and Mr. Basu, learned Counsel appearing for the respondent/assessee.

The substantial question of law raised before us has been decided in favour of the assessee and against the Revenue by the Hon'ble Supreme Court in the case of *Commissioner of Income Tax –versus- Balkrishna Industries Ltd.* reported in (2018) 300 CTR (SC) 209. The facts of the said case was identical to the case before us and this is also a case where the assessee availed the benefit of Deferral Scheme announced by the Government of Maharashtra which provided for affront payment of the sales tax liability prematurely in terms of the agreement between the parties which was in tune with the scheme announced by the Government. The Hon'ble Supreme Court held that what the assessee was required to pay after 12 years in 6 instalments was paid by the assessee prematurely and that the State may have received the higher sum after the period of 12 years and in 6 instalments. However, the statutory arrangement under the Fourth Proviso in Section 38 of the Act does not amount to remission or cessation of the assessee's liability. Thus, it was held that one of the requirements to Section 41(1)(a) of the Act has not been fulfilled. The said decision applies in full force to the assessee's case. Furthermore, we note that the Commissioner of Income Tax (Appeals) while allowing the assessee's appeal by order dated 07.12.2009 followed the assessee's own case for the assessment year 2004-05 as decided by the Tribunal as against the said order, the Revenue filed an appeal before this Court in ITAT 234 of 2017 and though the present substantial question of law which is raised before us was raised in that appeal, the Revenue did not press the said question and argue only on two other questions; one with regard to computation of deduction under

Section 80HHC and the other relating to expenditure for laying down power evacuation line to connect the assessee's plant to the grid belonging to the State Electricity Board, whether would constitute Revenue expenditure or the capital expenditure. The Hon'ble Division Bench by judgment dated 04.07.2018 dismissed the appeal filed by the Revenue and answered those two questions against the Revenue. Thus, the substantial question of law raised before us in this appeal has been already decided in favour of the respondent/assessee and the said decision of the Tribunal has attained finality.

Thus, in the light of the above discussion, we find that the order passed by the Tribunal does not call for any interference. Accordingly, the appeal fails and the same is dismissed. The substantial question of law is answered against the Revenue.

The application being IA No.GA 2 of 2017 (Old No. GA 1873 of 2017) also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)