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

IA No.GA/2/2019
In
ITAT 145 of 2019

PRINCIPAL COMMISSIONER OF INCOME TAX-3, KOLKATA
Vs
M/S. DAMODAR VALLEY CORPORATION, DVC TOWERS

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 30th November, 2021.

Appearance:
Mr. P.K. Bhowmik, Adv.
…for the appellant.

Mr. Rahul Tangri, Adv.
Mr. Deepro Sen, Adv.
…for the respondent.

The Court : This matter has been listed under the caption 'To Be Mentioned'. It is pointed by Mr. P.K. Bhowmik, learned senior standing counsel for the appellant/Revenue that he had appeared in the matter when the case was listed on 17.11.2021. However, in the order-sheet the name of Mr. D. Chowdhury, learned counsel has been wrongly reflected.

This inadvertent error stands rectified. Instead of the name of Mr. D. Chowdhury, learned counsel for the appellant, the name of Mr. P.K. Bhowmik, learned counsel should be printed and fresh copy of the order be issued.

Let this portion of the order form part of the order dated 17.11.2021.

Re.: ITAT 145 of 2019

This appeal is treated as on the day's list with consent of the parties.

This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) is directed against the order dated 21st August, 2018 passed by the Income Tax Appellate Tribunal, , "A" Bench, Kolkata (the Tribunal) in ITA No. 438/Kol/2017 for the assessment year 2013-14.

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

i) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in not considering the definition of Company as defined in section 2(17) and 2(26) of the Income Tax Act, 1961 while adjudicating the question of making the assessee eligible for applicability of the sections 115JB of the Income Tax Act, 1961 in the case of the assessee?

ii) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in not appreciating that the assessee was following the Gazette Notification of the Government of India that is O.M. No.GI/Sectt/Gazette Notification 1249 dated November 12, 2012 to change its accounting policy and prepared the books of accounts accordingly as per the provision of the Revised Schedule VI under the Companies Act, 1956 and as such the assessee can not avoid the liability pay taxes according to the provision of section 115JB of the Income Tax Act, 1961?

iii) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal erred in law in failing to appreciate that the recurring income of the assessee for years after years out of tax free Bond is taxable according to the provision of section 14A of the Income Tax Act, 1961?

iv) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal erred in law in failing to consider the provision of Rule 46A of the Income Tax Rules, 1962 while dismissing the appeal of the revenue?

We have heard Mr. P.K. Bhowmik, learned senior standing counsel for the appellant/Revenue and Mr. Rahul Tangri, learned counsel for the respondent/assessee.

It is submitted by learned counsel for the respondent/assessee that the respondent has availed the benefit of Vivad Se Vishwas scheme and Form No.5 has been issued by the department on 10.12.2020.

In the light of the said submission, the appeal need not be considered on merits and can be disposed of on the said ground.

Accordingly, the appeal stands disposed of on the ground that the respondent has availed the benefit of the said scheme. Consequently, the substantial questions of law are left open.

The stay application being IA No.GA/2/2019 accordingly stands disposed of.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/GH