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ITAT/267/2017
IA No.GA/2/2017 (Old No.GA/2320/2017)

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

PRINCIPAL COMMISSIONER OF INCOME
TAX, KOLKATA-1, KOLKATA

-Versus-

M/S. HOOGHLY MILLS PROJECTS LIMITED

Appearance:
Mr. Smarajit Roychowdhury, Adv.
Mr. Madhu Jana, Adv.
...for the appellant.

Mr. Asim Choudhury, Adv.
Mr. Siddhartha Das, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 25th November, 2021.

The Court : This appeal of revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 31st May, 2015 passed by the Income Tax Appellate Tribunal, A-Bench, Kolkata (the 'Tribunal') in ITA No.361/Kol/2017 for the assessment year 2006-07.

The revenue has raised following substantial questions of law for consideration:

"a) *Whether on the facts and circumstances of the case, the Hon'ble Tribunal was justified in its interpretation that*

Section 2(22)(e) of the IT Act, 1961, shall not apply if the shareholder is a beneficial one but not registered, while the Act clearly mentions the beneficial nature of such shareholding as the conditional requirement and is silent about the need of being registered?

b) Whether on the facts and circumstances of the case, the Hon'ble Tribunal was justified in ignoring the shareholding as reflected in the submitted Balance Sheet and discussed as such in the Assessment Order?"

We have heard Mr. Smarajit Roychowdhury, learned Counsel for the appellant/revenue and Mr. Asim Choudhury, learned counsel for the respondent/assessee.

Identical substantial question of law in the assessee's own case for the assessment year 2005-06 was considered by the Hon'ble Division Bench in ITA NO.97/2011 and by judgment dated 13th June, 2016 the appeal was dismissed and the questions were answered against the revenue. The said judgment reads as follows:

"The appeal is directed against a judgment and order dated 17th September, 2010 passed by the Income Tax Appellate Tribunal, Bench-C, Kolkata in ITA 914/Kol/2010 pertaining to the assessment year 2005-06 by which the appeal preferred by the assessee was allowed and the order under Section 263 was set aside. The aggrieved revenue has come up in appeal. The following question of law was formulated at the time of admission of the appeal:

"I. Whether the learned Tribunal below committed substantial error of law in setting aside the order under Section 263 of the Income Tax holding the same is not erroneous and prejudicial to the interest of the Revenue,

notwithstanding the fact that the same Bench in the case of *M/s. Hooghly Mills Project Ltd.* in ITA No.913/Kol/2010 has held that the order of the Assessing Officer is erroneous and prejudicial to the interest of the Revenue.

II. Whether the learned Tribunal below committed substantial error of law in canceling order under Section 263 of the Act wherein the assessment was set aside on the grounds of failure to make enquiry and addition under Section 36(i)(v)(a) read with Section 2(24)(x) of the Act on account of Employees' Contribution to Provident Fund due to non-deposit of contribution within the date to the appropriate authority.

Mr. Khaitan, appearing for the assessee submitted that the first question is unmeritorious. In the case of *Hooghly Mills Projects Ltd.* the point of applicability of Section 2(22)(e) was raised on the basis that the shareholding was more than 10%; whereas in the case before us, the shareholding is restricted to 5.27%. Therefore, there was no question of applicability of any deemed dividend.

In so far as the second question is concerned, he pointed out that the payment of arrear provident fund was in accordance with the order passed by the High Court. The same practice, as a matter of fact, he added, had been continuing for some time. In respect of one of the earlier years, the assessing Officer had disallowed the payment of provident fund though made in pursuance of order of Court, but subsequently that was allowed by the CIT(Appeal). He, therefore, submitted that both the questions raised by the revenue are without any substance.

Mr. Sinha, learned Advocate appearing for the revenue is unable to dispute any of the submissions advanced by Mr. Khaitan. In that view of the matter, both the questions are

answered in the negative and against the revenue. The appeal, is, thus dismissed."

Thus, following the above decision dismissing the appeal against revenue, the instant appeal (ITAT No.267/2017) stands dismissed and the substantial questions of law are answered against the revenue.

The connected stay application, IA GA/2/2017 (Old No.GA/2320/2017) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)