OD-2

ORDER SHEET
ITAT/327/2017
IA NO: GA/1/2017
(Old No:GA/3123/2017)
GA/2/2017
(Old No:GA/3124/2017)
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA -2
VS
BATLIVALA AND KARANI SECURITIES INDIA PVT. LTD

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
And
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 29TH November, 2021

Appearance:
Mr. S. Lamba, Adv.
...For the Appellant

Mr. A. Agarwal, Adv.
Mr. F. Ghoffar, Adv.
...For the Respondent

The Court : This appeal of the revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 8th July, 2016 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata (the 'Tribunal') in ITA Nos.1234 & 1235/Kol/2013 for the assessment years 2008-09 and 2009-10.

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

"(a) Whether in the facts and in the circumstances of the case and in law the payment to non-residence subsidiary for expansion of business

outside India can be treated as business expenditure or it can be treated as fees for technical services under section 40(a) (iii) of the Income Tax Act?

(b) Whether in the facts or in law of the case the Hon'ble Tribunal was justified in computing u/s.44DA(1) when the foreign subsidiary have no permanent establishment in India, its income from the said transaction would not be computed u/s.44DA(1)?

(c) Whether the Ld. Tribunal erred in law in holding that the assessee company was not liable to deduct TDS on the technical service fees payment and deduction of the same as expenses is not allowed as per provisions of Section 40(a)(i) of Income Tax Act, 1961."

We have heard Mr. Lamba, learned counsel for the appellant/revenue and Mr. Agarwal, learned counsel for the respondent/assessee.

The learned counsel appearing for the appellant/revenue, on instruction, submitted that the revenue cannot pursue this appeal on account of low tax effect. This submission is placed on record on the ground of low tax effect. Accordingly, the appeal stands dismissed. The substantial questions of law are left open.

With the dismissal of the appeal, the connected application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/S.De