OD-12

ORDER SHEET
IA NO. GA/2/2017
(Old No:GA/3718/2017)
In ITAT/390/2017
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

THE PRINCIPAL COMMISSIONER OF INCOME TAX-4, KOLKATA
Vs
M/S. EPCOS INDIA PVT. LTD.

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
And
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 10TH DECEMBER, 2021

Appearance:
Mr. P. K. Bhowmik, Adv.
Mr. Asok Bhowmik, Adv.
...For the Appellant

Mr. Abrotosh Majumdar, Sr. Adv.
Mr. Agnibesh Sengupta, Adv.
Mr. Amitava Mitra, Adv.
Mr. Paritosh Sinha, Adv.
Ms. Antara Choudhury, Adv.
...For the Respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 22nd June, 2016 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the 'Tribunal') in ITA No.1161/Kol/2013 for the assessment year 2006-07.

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

"(a) Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in upholding the order passed by the Commissioner of Income Tax (Appeals) despite the fact that the Assessing Officer was carrying forward the unabsorbed depreciation loss beyond the period of eight years in contravention to the amendment made in sub-section 2 of Section 32 of the Income Tax Act introduced by the Finance Act, 1996 with effect from 1st April, 1997 ?

(b) Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in upholding the order passed by the Commissioner of Income Tax (Appeals) by not considering the decision of the Hon'ble Apex Court in the case of Peerless General Finance & Investment Co. Ltd reported in (2016) 73 taxmann.com 258 (SC) ?"

We have heard Mr. P. K. Bhowmik, learned Standing Counsel appearing for the appellant/revenue and Mr. Abrotosh Majumdar, learned Senior Counsel appearing for the respondent/assessee.

Learned Counsel on either side fairly submitted that the substantial question of law raised before us have been answered against the revenue in the decision of Madras High Court in the case of Commissioner of Income Tax, Chennai V. Sanmar Speciality Chemicals Ltd. Reported in (2020) 122 taxmann.com 212 (Madras). The operative portion of the judgement reads as follows :

> "6. After elaborately hearing the learned Senior Standing Counsel appearing for the appellant – Revenue, we are of the considered opinion that the reliance placed on the decision in the case of Peerless General Finance & Investment Co. Ltd. (supra), would, in no manner, assist the case of the Revenue. We say so after referring to Circular No.14/2001 dated 22-11-2002 issued by the Central Board of Direct Taxs, which are Explanatory Notes on Provisions relating to Direct Taxes. Paragraph 30 of the said circular deals with modification of provisions relating to depreciation."

Thus, following the above decision, the appeal filed by the revenue is dismissed and substantial questions of law are answered against the revenue.

With the dismissal of the appeal, the application being GA No.2 of 2017 (Old GA No.3718 of 2017) is also dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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