O-130

ITA/77/2018

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

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-1, KOLKATA

-Versus-

EXIDE INDUSTRIES LTD.

Appearance:
*Mr. J. P. Khaitan, Sr. Adv.*
*Ms. Nilanjana Banerjee Pal, Adv.*
*...for the respondent.*

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 12th September, 2022.

The Court: This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the common order dated 20th January, 2016 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) for two assessment years namely, 2003-04 and 2004-05 in ITA No.189/Kol/2007 and ITA No.1414/Kol/2007.

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

> *"Whether the provision for royalty and technical fees payable by the assessee as a resident of Japan could be disallowed under Section 40(a)(i) of the Income Tax Act, 1961 in view of the Indo-Japan treaty for avoidance of double taxation ?"*

We have heard Mr. J.P. Khaitan, learned senior counsel assisted by Ms. Nilanjana Banerjee Pal, learned Advocate for the respondent.

On hearing the submission of the learned counsel appearing for the respondent, we are of the view that these appeals cannot be pursued by the revenue for both the assessment years as the tax effect involved in both the appeals are below the threshold limit. Nothing has been brought on record by the revenue to show that the case would be covered under any of the exceptional clauses in the Circular issued by the Central Board of Direct Taxes (CBDT).

Therefore, the appeals stand dismissed on low tax effect and the substantial question of law is left open.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

As//S.Das