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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

IA No.GA 2 of 2017
(OLD NO:GA/294/2017)
In
ITAT 29 of 2017

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-4, KOLKATA
Vs.
M/S. V2 RETAIL LIMITED

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : January 04, 2022.

Appearance:
Mr. S.N. Dutta, Adv.
Mr. Madhu Jana, Adv.
...for the appellant

Mr. Saurabh Bagaria, Adv.
Mr. Pranav Sharma, Adv.
Mr. Ritesh Goel, Adv.
...for the respondent

The Court : This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act in brevity) is directed against the order dated 01.06.2016 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (the Tribunal) in ITA No. 2413/Kol/2013 for the assessment year 2009-2010. Though the revenue has framed four substantial questions of law for consideration the revenue has pressed only the following substantial question of law which is as follows:-

i) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law in holding the additional depreciation under Section 32(I)(iia) read with proviso (B) is allowable to the assessee despite the fact that proviso (B) to Section 32(I)(iia) bars deduction under the said Section to another plant and machinery installed in any office premises or any residential accommodation including accommodation in the nature of a guest house.?"

We have heard Mr. S.N. Dutta, learned Standing Counsel for the appellant/revenue and Mr. Saurabh Bagaria, learned Counsel for the respondent assessee. The assessing officer while completing the assessment vide order dated 8th December, 2011 under Section 143(3) of the Act rejected the claim of the additional depreciation on the plant and machinery newly added by the assessee during the assessment year under consideration. The assessee carried the matter on appeal and contended that the plant and machinery were installed in the showroom of the assessee and, therefore, they are entitled for claim for additional depreciation and clause (B) in the first proviso to Section 32(I)(iia) would not stand attracted. The Commissioner of Income Tax (Appeals) – XII, Kolkata (CITA) by order dated 19th August, 20123 dismissed the appeal holding that the assessee has claimed additional depreciation on assets installed at factory as well as on showrooms. However, as per Section 32(I)(iia) of the Act additional depreciation is available when plant and machinery were not installed at any office premises or any residential accommodation including accommodation in the nature of guest-house. Therefore, CIT(A) held that the claim for additional depreciation cannot be allowed and affirmed the view taken by the assessing officer. The assessee carried the matter on appeal to the Tribunal. The Tribunal in paragraph 2.6 of its order held that installation of new plant and machinery in sales outlet/retail office would fall under Clause B of proviso to Section 32(I)(iia) of the Act and agreed with the submission made by the revenue. Thus in our considered view the substantial question of law which has been raised for our consideration has in fact been answered in favour of the revenue by the Tribunal and the present exercise which is sought to be done before us is purely academic. Learned Standing Counsel pointed out that in paragraph 2.6 of the impugned order passed by the Tribunal there is a reference to the written down value and that aspect is what the revenue has raised before this Court in this appeal as pointed out earlier. The legal issue which has been raised before us has been decided in favour of the revenue and it has been held that the assessee is not entitled for deduction as their case would fall under Clause B of proviso to Section 32(I)(iia) of the Act. Therefore, the substantial question of law framed before us is not required to be answered in this appeal as it has been decided in favour of the revenue by the Tribunal themselves. So far as other direction given by the Tribunal to the assessing officer to rework the written down value on account of disallowance of additional depreciation claimed, we are informed by the learned Counsel for the respondent/assessee that such exercise has been done by the assessing officer. In the light of the above, the appeal stands disposed of on the ground that the substantial question of law framed for consideration has been in fact decided by the Tribunal in favour of the revenue.

Consequently, the application also stands disposed of.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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