OD-9

ITAT/18/2020
IA NO.GA/2/2020 (Old No.GA/697/2020)

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

PRINCIPAL COMMISSIONER OF INCOME TAX-4, KOLKATA

-Versus-

M/S. V2 RETAIL LTD.

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

Mr. J.P. Khaitan, Sr. Adv.
Mr. Saurabh Bagaria, Adv.
Mr.Praveen Sharma, Adv.
Mr. Swetank Rai, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 28th July, 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 order dated 31st October, 2018 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (in short the 'Tribunal') in ITA No.1517/Kol/2015 related to the assessment year 2011-12 and C.O. No.123/Kol/2017 arising out of ITA No.1517/Kol/2015 for the assessment year 2011-12.

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

i) Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal erred in confirming the order of the Learned Commissioner of Income Tax (Appeals) deleting addition of Rupees 605,23,24,263/- without appreciating the fact that the Assessee was required to prepare its Profit and Loss account in accordance with the provisions of Part II and Part III of Schedule VI of the Companies Act, 1956, as required by the provision of Section 115JB(2) of Income Tax Act, 1961?

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel assisted by Mr. Saurabh Bagaria, learned Advocate appearing for the respondent/assessee.

On going through the order passed by the Commissioner of Income Tax (Appeals)-4, Kolkata [CIT(A)] as well as the order passed by the learned Tribunal impugned in this appeal, we find that the first appellate authority as well as the tribunal rightly took note of the settled legal position as settled by the Hon’ble Supreme Court in the case of *Appollo Tyres Ltd. vs. Commissioner of Income Tax* reported in 2002 (255) ITR 273. The issue in the present case is with regard to the object of Section 115J of the Act. The Hon'ble Supreme Court has held as follows:

> *"Therefore, we are of the opinion, the Assessing Officer while computing the income under section 115J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly mentioned in accordance within the Companies Act. The Assessing Officer thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115."*

The CIT(A) as well as the tribunal, after noting the facts, held that the accounts of the assessee are maintained in accordance with the Schedule-6 of the Companies Act. This factual conclusion is not being disputed by the revenue before us. In such circumstances, the learned tribunal was fully justified in relying upon the decision of the Hon'ble Supreme Court and affirmed the order passed by the CIT(A).

Thus, we find there is no question of law much less substantial question of law arising for consideration in this appeal. Accordingly, the appeal filed by the revenue (ITAT/18/2020) fails and is dismissed.

Consequently, the connected application for stay (GA/2/2020) also stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

A.Sadhukhan/S.Das
AR(CR)