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

IA NO.GA/2/2018 (Old No. GA/847/2018)
In
ITAT/102/2018

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA – 4, KOLKATA
VS.
M/S. V2 RETAIL LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : February 2, 2022.

[Via Video Conference]

Appearance :
Mr. Madhu Jana, Adv.
... for the appellant

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

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 23rd August, 2017 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (Tribunal) in ITA No. 1260/Kol/2015 for the assessment year 2008-09.

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

1. Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law to allow the claim of the assessee by relying upon the decision of CIT –vs- Agarwal Transformer Private Limited Reported in (2002) 258 ITR 251 Raj. which is distinguishable both in fact and in law?
2. Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law in deletion of addition made to the tune of Rs. 1,66,96,747/- on the ground that the depreciation at 80% should be allowed to an electric generator since falling in the category of a renewable energy device the same is being eligible for enhanced rate of depreciation under Section 32(1) of the said Act?
3. Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law to hold that the additional depreciation under Section 32(1) (iia) read with Proviso (B) is allowable to the assessee despite the fact that Proviso (B) to 32(1) (iia) bars deduction under the said Section to any plant and machinery installed in any office premises or any residential accommodation including accommodation in the nature of Guest House?

We have heard Mr. Madhu Jana, learned standing counsel for the appellant/revenue and Mr. Saurabh Bagara duly assisted by Mr. Pranav Sharma and Mr. Rite Goel, learned advocates for the respondent/assessee.

The learned counsel for the respondent/assessee submitted that the revenue cannot pursue this appeal on the ground of low tax effect.

Learned counsel for the appellant does not have specific instructions who seeks to pursue the appeal by referring to certain detail which has been mentioned in paragraph 3 of the stay petition. However, we find from paragraph 9 of the stay petition that the revenue itself has stated that the tax effect reported in the instant case is at Rs.50,09,024/-. If this is the statement which has gone on record and signed by the Principal Commissioner of Income Tax – 4, Kolkata, the revenue cannot wriggle out of the same. That apart, we have perused the assessment order dated 21.01.2014 under Section 147 read with Section 143(3) of the Act and in the computation of income and tax appended to the assessment order, the net tax payable is Rs.63,36,753/-. This amount tallies with the amount mentioned in the order dated Commissioner of Income Tax – 4, Kolkata dated 27.07.2015. Thus, we are of the clear view that the appeal cannot be pursued by the revenue on the ground of low tax effect. Hence, the appeal stands dismissed.

The substantial questions of law are left open.

Consequently the stay application stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH