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

ITA/58/2021

PRINCIPAL COMMISSIONER OF INCOME TAX-I, KOLKATA
VS.
M/S. MACNALLY BHARAT ENGINEERING COMPANY LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 29, 2022.

Appearance:
Ms. Smita Das De,, Adv.
…for the appellant
Mr. A.K. Dey, Adv.
…for respondent

The Court :- This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated March 1, 2017 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (Tribunal) in ITA No. 100/Kol?2011 and CO. 13/Kol/2011 for the assessment year 2006-07, I.T.A. no. 532/Kol/2012 & 217/Kol/2012 for the assessment year 2007-08 and I.T.A. No. 533/Kol/2012 and 218/Kol/2012 for the assessment year 2008-09.

The appeal was admitted on the following substantial questions of law:-

"(a) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal "A" bench, erred in law in deleting the addition made on account of Employees' contribution for Provident Fund u/s 36(1)(va) r-w 2(24)(x) ignoring the fact that the employees' contribution to the PF was supposed to be deposited by the employer within the due date as specified in the PF act failing which no deduction could have bee allowed to the assessee as the intention of the legislature is very clear in this regard ?

(b) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal "A" Bench, erred in law in holding that 'retention money' could not be regarded as income for the purposes of calculating Book profit under Section 115JB of the Act by disregarding that the same had already been credited by the assessee in its Profit and Loss account ?"

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant and Mr. A.K. Dey, learned Advocate appearing for the respondent/assessee.

It is submitted by the learned Advocate appearing for respondent/assessee that already an order has been passed by the National Company Law Tribunal, Kolkata Bench – I (NCLT) in an application under Section 7 of the Insolvency & Bankruptcy Code, 2016 and an order was passed on 29th April, 2022 under Section 7 of the Code for initiating Corporate Insolvency Resolution Process against the respondent/assessee and the application was admitted and a Moratorium under Section 14 of the Code was also ordered.

In the light of the said position revenue cannot pursue this appeal any further.

Accordingly, the appeal stands disposed of on the aforesaid ground and substantial questions of law are left open.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH.