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ITAT/75/2010

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

M/S. SELVEL ADVERTISING PVT. LTD.

-Versus-

DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE-12, KOLKATA

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 6th June, 2022.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 11th December, 2009 passed by the Income Tax Appellate Tribunal, "A" Bench, in ITAT No.820/Kol/2008 and cross-objection No.48/Kol/2008 by the assessee for the assessment year 2005-06. The assessee has raised for the following substantial questions of law for consideration:

i) Whether, the Learned Income Tax Appellate Tribunal "A" Bench, Kolkata erred in law in not deciding that the assessee was entitled to get deduction under

Section 80IA(1) read with Section 80IA(2) of the Income Tax Act, 1961 for ten consecutive assessment years i.e., nine subsequent consecutive years after the initial Assessment Year 2004-05 in which deduction was allowed for the first time?

ii) Whether, the Learned Income Tax Appellate Tribunal "A" Bench, Kolkata ought not to reject the cross-objections filed by the Assessee for the Assessment Year 2005-06?

iii) Whether, the Learned Income Tax Appellate Tribunal "A" Bench, Kolkata erred in Law in restoring the order of the Assessing Officer in applying the provisions of the second proviso to Section 32(1) of the Income Tax Act, 1961 on block of assets on which 100% depreciation has been prescribed and thus disallowing 50% depreciation on "Purely Temporary Erections" used for less than 180 days?

iv) Whether, the Learned Income Tax Appellate Tribunal "A" Bench, Kolkata erred in Law in not treating the 100% depreciation as revenue expense and in wrongly applying the provisions of Section 32(1) of the Income Tax Act, 1961 on "Purely Temporary Erections" used for less than 180 days?

v) Whether, the Learned Income Tax Appellate Tribunal "A" Bench, Kolkata erred in Law in upholding the addition of Rs.21,376/- made by the Assessing Officer u/s 36(1)(va) of the Income Tax Act, 1961 on account of Employees contribution to ESI when the same is allowable u/s 43B of the Income Tax Act, 1961 as the said section supersedes section 36(1)(va) of the Income Tax Act, 1961?

vi) Whether, the Learned Income Tax Appellate Tribunal "A" Bench, Kolkata erred in Law in deciding that for computing the due date as per explanation to section 36(1) of the Income Tax Act, 1961, no grace period is allowed for the deposit of ESI contribution ignoring the various High Court Judgments?

This appeal was presented on 2nd April, 2010 and thereafter no steps have been taken to move the appeal for admission. We are also informed that no stay application had been filed by the appellant/assessee.

On going through the materials and papers, we find that the matter which was the subject-matter for consideration before the tribunal was entirely factual and the tribunal, after noting the earlier decision on the same point, has allowed the appeal filed by the revenue. Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal (ITAT/75/2010) stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As/S.Das