

OD-5

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

ITAT/180/2018

PR. C.I.T., KOLKATA – 1, KOLKATA
VS.
M/S. DIGBOI CARBON PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 27th July, 2022

Appearance :
Mr. Soumen Bhattacharyya, Adv...for the ppellant.

Mr. Subash Agarwal, Adv.for 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 2nd February, 2018 passed by the Income Tax Appellate Tribunal “D” Bench, Kolkata (Tribunal) in I.T.A. No. 1621/Kol/2016 for the A.Y. 2010-11.

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

- i) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal erred in law while treating the amount of VAT Receivable and Excise Refund as eligible for deduction under section 80IC of the Income Tax Act, 1961, by disregarding that those are in the nature of duty drawback, and could not be a profit derived from industrial undertakings and

cannot be reckoned in computing deduction under section 80IC, of the Income Tax Act, 1961 ?

- ii) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal erred in law in allowing deduction under section 80IC of the Income Tax Act, 1961 on VAT Receivable and Excise Refund which is contrary to law ?
- iii) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal erred in law in allowing deduction under section 80IC of the Income Tax Act, 1961 on VAT Receivable and Excise Refund by failing to distinguish the case of Meghalaya Steels which is not applicable in the instant case since it was on the issue of subsidy and not on VAT Receivable and Excise Refund and that case is on the issue of transport, interest, power and insurance subsidy which are essentially in the nature of reimbursement of cost of production and cannot be equated with VAT Receivable and Excise Refund ?
- iv) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal has failed to interpret the CBDT Circular No.39/2016 dated 29.11.2016 which did not refer to the question of VAT Receivable and Excise Refund being admissible for deduction under the Income Tax Act ?

We have heard Mr. Soumen Bhattacharyya, learned Advocate appearing for appellant and Mr. Subash Agarwal, learned Advocate appearing for respondent.

It is submitted by the learned counsel that the tax effect in this appeal is below the threshold limit.

On perusal we find that the tax effect is Rs.70,52,986/- which is below the threshold limit fixed by the Circular issued by CBDT.

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

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)