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

ITA/70/2018
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-I, KOLKATA
VS.
M/S. BINANI INDUSTRIES LIMITED

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 24th August, 2022

<u>Appearance</u> :
Ms. Smita Das De, Adv.
....for appellant

Mr. Madhur Agarwal Adv.
Mr. Pranit Bag, Adv.
Mr. A.K. Dey, 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 March 02, 2016, passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in I.T.A. No.144/Kol/2013 for the assessment year 2009-10.

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

"Whether the amount of Rs.12,65,75,000/-, received by the assessee on account of forfeiture of shares would be added to the book profits of the assessee for the purpose of taxation under section 115JB of the Income Tax Act, 1961?"

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant/revenue and Mr. Madhur Agarwal, learned Counsel appearing for the respondent/assessee.

In our considered view, we need not decide the substantial question of law as has been framed by this Court on account of certain facts. The Deputy Commissioner of Income Tax (Central)-XXVIII, Kolkata (DCIT) has passed an order on 24th December, 2012 under Section 251/143(3) of the Act by giving effect to the order dated 26th November, 2012 passed by the Commissioner of Income Tax (Appeals), Central-1, Kolkata in the assessee's appeal for the assessment year under consideration, A.Y. 2009-10.

The following computation of the book profit as per the directions of the CIT was made in his order dated 26th November, 2012 :-

Net profit as per Profit & Loss account	Rs. 33,90,47,340
Less : Relief allowed in appeal as per Para 12	Rs. 12,65,75,000
Revised net profit for the purpose of section 115JB	Rs. 21,24,72,340
Less : Relief allowed as per Para 9 of the order	Rs. 2,18,09,000
	Rs. 19,06,63,340
Less : Dividend income	Rs. 33,16,28,269
	(-) Rs. 14,09,64,929
Add : Disallowance made by the assessee u/s. 14A	Rs. 1,37,12,550
Book Profit	(-) Rs. 12,72,52,379

Tax thereon	NIL
Less : TDS	Rs.30,51,616/-
Refundable	Rs.30,51,616/-

From the above computation, it is seen that the book profit is a negative balance. Therefore, even assuming that we are to take it for consideration the question of law which has been admitted and assuming such question is decided in favour of the revenue, the result would be the case where the revenue will be neutral.

Therefore, we are of the view that no useful purpose would be served by taking up the question for adjudication and all that we can observe to leave the substantial question of law upon considering the factual situation in the assessee's case.

For the above reason, the substantial question of law as framed is left open and the appeal is dismissed on the ground that the book profit as computed under Section 115JB is a negative balance.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/S. Chandra