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

ITAT/48//2015
IA No.GA/1/2015 [OLD NO.GA/1720/2015]
COMMISSIONER OF INCOME TAX KOLKATA-3, KOLKATA
VS.
M/S. ITC LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 5th July, 2022

Appearance :
Ms. S. Das De, Adv.
...for the appellant.
Mr. J. P. Khaitan, Sr. Adv.,
Ms. Nilanjana Banerjee Pal, Adv...for respondent.

The Court : This appeal by the revenue filed under section 260A of the Income Tax Act, 1961 [the Act, for brevity] is directed against the order dated 12th September, 2014 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA Nos.1339 & 1144/Kol/2012 for the assessment year 2008-09.

The revenue has raised the following substantial question of law for consideration.

i) Whether on the facts and in the circumstances of the case the learned Tribunal erred in law in deleting the disallowances of commission to non-whole time directors amounting to Rs.31,72,677/- and sitting fees of Rs.13,20,000/- made by the Assessing Officer, under section 40(a)(ia) of the Income Tax Act, 1961 in relation to the AY 2008-09 ?

ii) Whether on the facts and in the circumstances of the case the learned Tribunal erred in law in allowing the assessee's claim of deduction under section 80IA of the Income Tax Act, 1961 in relation to the assessment year 2008-09 ?

iii) Whether on the facts and in the circumstances of the case learned Tribunal erred in law in holding that additional demand charges has to be included for determination of the market value in the case of captive power undertaking ?

iv) Whether on the facts and circumstances of the case learned Tribunal erred in law in deleting the brought forward loss of power undertaking I, Kovai, incurred prior to the initial year to be set off against the profits of the eligible business of the assessee ?

We have heard Ms. Smita Das De, learned standing Counsel and Mr. J.P. Khaitan, learned Senior Advocate assisted by Ms. Nilanjana Banerjee Pal, learned Advocate for the respondent/assessee.

We need not labour much to decide the correctness of the order passed by the Tribunal in this case as identical issues have been decided in the assessee's own case for the earlier assessment years, which orders have attained finality.

So far as the substantial questions of law No. 1 is concerned identical issue was considered by the Tribunal in assessee's own case for the assessment year 2007-08. Following the said decision the Tribunal had dismissed the appeal filed by the revenue. The order passed by the Tribunal for the assessment year 2007-08 having attained finality, principles of consistency has to be applied and, therefor, substantial question of law is answered against the revenue.

So far as substantial questions of law Nos. 2 and 3 are concerned those issues were jointly dealt with and decided by the Commissioner of Income Tax (Appeals) whereunder the order passed in assessee's own case for the assessment year 2002-03 was followed.

The Tribunal took note of the said fact and dismissed the appeal filed by the revenue. We find no distinguishing feature to take a different stand.

Accordingly, the questions of law nos. 2 and 3 are answered against the revenue. With regard to the substantial question of law No. 4 is concerned Tribunal rightly took note of the decision of the Division Bench of the High Court of Madras in ***VELAYUDHASWAMY SPINNING MILLS P. LTD. VS. ACIT*** :[(2012) 340 ITR 477 (Mad)]. The said decision was affirmed by the Hon'ble Supreme Court as the SLP filed by the department was dismissed as reported in (2016) 76 taxmann.com 176(SC). The learned Senior Counsel appearing for the respondent/assessee also placed reliance on the decision of the High Court of Madras in ***COMMISSIONER OF INCOME TAX SALEM VS. CHOLA SPINNING MILLS (P) LTD.*** [2020] 114 taxmann.com 642 (Madras) wherein apart from noting the decision in the case of ***VELAYUDHASWAMY SPINNING MILLS P. LTD. (supra)*** the Court also took note of the circular issued by C.B.D.T. in Circular No. 1 of 2016 dated 15th February, 2016.

Therefore, the order passed by the Tribunal does not call for any interference.

Accordingly, the substantial question of law No. 4 is answered against the revenue.

In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the stay application being GA/1/2015 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/GH.