OD-24

ITAT/208/2017
IA NO: GA/2/2017(Old No.GA/1809/2017)
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VERSUS
APEX ENTERPRISES (I) LIMITED

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 7th March, 2021

<u>Appearance</u>:-

Mr. S.N. Dutta, Adv.
Mr. Soumen Bhattacharya, Adv.
... For Appellant
Mr. R.K. Murarka, Adv.
Ms. Sutapa Roychowdhury, Adv.
Ms. Aratrika Roy, 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 composite order dated 18th March, 2016, passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (Tribunal) in ITA No.1796/Kol/2008 and ITA No.285/Kol/2008 for assessment year 2002-03. The revenue has raised the following questions of law for consideration :-

I. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in facts as well as in law in holding that the principal business of the assessee is granting of loans and not trading in shares and therefore explanation to section 73 of the Income Tax Act will not apply in the facts of the instant case?

II. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law and in facts in dismissing the appeal filed by the revenue in not treating the interest of Rs.8,40,00,000/- receivable by the assessee for the Assessment year 2002-03 as income following the mercantile system of accounting when interest payable by the assessee has been claimed and allowed under the system on accrual basis and not on actual basis?

We have heard Mr. S.N. Dutta, learned standing Counsel appearing for the appellant and Mr. R.K. Murarka, learned Counsel appearing for the respondent/assessee.

The appellant department has given instructions to the learned standing Counsel for the appellant that this appeal is not being pursued by the revenue on account of low tax effect.

The appeal stands dismissed on the ground of low tax effect and the substantial questions of law are left open.

With the dismissal of the appeal, the application for stay, being IA No. GA/2/2017(Old No.GA/1809/2017), stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/SN
AR(CR)