OD – 4

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

IA NO.GA/2/2017 (Old No. GA/1879/2017)
In
ITAT/223/2017

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA – 4,
VS.
M/S. BERGER PAINTS INDIA LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : February 2, 2022.

[Via Video Conference]

Appearance :
Mr. P.K. Bhowmik, Adv.
... for the appellant

Mr. J.P. Khaitan, Sr. Adv.
Ms. Nilanjana Banerjee Pal, Adv.
..for the 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 23rd November, 2016 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (Tribunal) in ITA No. 2112/Kol/2013 for the assessment year 2006-07.

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

1. Whether on the facts and in the circumstances of the case the Learned Tribunal has erred in law in allowing the deduction claimed by the assessee under Section 80IB of Income Tax Act, 1961 for an aggregate amount of Rs.33,81,19,725/- instead of Rs.30,21,88,063/- allowed by the Assessing Officer?
2. Whether on the facts and in the circumstances of the case the Learned Tribunal has erred in law in rejecting the methodology of deduction under Section 80IB of Income Tax Act, 1961 computed by the Assessing Officer?
3. Whether on the facts and in the circumstances of the case conclusion arrived at by the Learned Tribunal in allowing the deduction under Section 80IB of the Income Tax Act, 1961 for an aggregate amount of Rs.33,81,19,725/- claimed by the Assessee instead of Rs.30,21,88,063/- as allowed by the Assessing Officer, is perverse?

We have heard Mr. P.K. Bhowmik, learned standing counsel for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel duly assisted by Ms. Nilanjana Banerjee Pal, learned counsel for the respondent/assessee.

The above substantial questions of law were considered by us in the assessee's own case for the assessment year 2008-09 in ITA No. 256 of 2017 and by judgment dated 14th December, 2021, the appeal filed by the revenue was dismissed. The said judgment is as follows :

"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 Tribunal has erred in law in upholding the order of CIT(Appeal) in allowing deduction under Section 80IB of Income Tax Act, 1961 in respect of "common expenses" of Rs.10,21,06,200/- in respect of its Units at Pandicharry, Goa and Jammu by dis-regarding that it was not correctly apportioned ?*

ii) *Whether on the facts and in the circumstances of the case the Learned Tribunal has erred in law in upholding the order of CIT (Appeal) in allowing deduction under Section 80IB of Income Tax Act, 1961 in respect of "interest income" of Rs.57,93,000/- on sale of scrap by treating it as income derived from profits and gains of industrial undertaking?*

iii) *Whether on the facts and in the circumstances of the case the Learned Tribunal has erred in law in deleting the addition of Rs.38,07,778/- made by the Assessing Officer under Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 by disregarding that there were borrowed capitals of Rs.78.05 crores and investments out of such borrowed funds were also made in making investments that yielded exempt income?*

We have heard Mr. P. K. Bhowmik, learned standing Counsel assisted by Mr. Madhu Jana, learned junior standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned Senior Counsel assisted by Mrs. Nilanjana Banerjee Pal, learned junior standing Counsel appearing for the respondent/assessee.

So far as the first substantial question of law is concerned, the Tribunal followed the assessee's own case for the assessment years, namely, 2000-01 and 2001-02 and allowed the deduction as claimed under Section 80IB of the Act. As against the said order of the Tribunal, the revenue preferred appeal before this Court and the appeal preferred by the revenue in ITA No.117 of 2009 was dismissed by a judgement dated 20th November, 2009 on the ground of unexplained and inordinate delay.

With regard to the assessment year 2002-03, the Tribunal granted relief to the assessee and the revenue carried the matter on appeal to this Court in ITA No.230 of 2009 which was dismissed by judgement dated 2nd September, 2019 on the ground that no question of law arises for consideration. Thus, the decision rendered by the Tribunal does not call for any interference.

The second substantial question of law concerns the claim for deduction under Section 80IB on the sale of scrap. This issue is no longer *res integra* and there are several decisions which are in favour of the assessee and the Tribunal had followed the decision of this Court in the case of Reckitt Benckiser (India) Ltd. –vs- Additional Commissioner of Income Tax, Range –12, Kolkata, reported in [2015] 56 taxmann.com 415 (Calcutta) and granted relief to the assessee. We find that the revenue has not made out any ground to interfere with the said finding rendered by the Tribunal which is taken note of the correct legal position.

With regard to the third substantial question of law, the Tribunal granted relief taking note of the decision in favour of the assessee by placing reliance in the case of Commissioner of Income Tax, Central-I, Calcutta –vs- Ashish Jhunjhunwala, reported in 2015(12) TMI 905. The said decision lays down the correct legal principle. Therefore, there is no error in the order passed by the Tribunal.

In the result, the appeal fails and the same stands dismissed. The substantial questions of law are answered against the revenue.

The connected application also stands dismissed.”

Thus, following the above decision of the assessee's own case, this appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the stay application stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH