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

ITA/379/2004
C.I.T. – II KOLKATA
VS.
VICKY INVESTMENT LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 22, 2022.

Appearance:
Ms. Smita Das De, Adv.
...for appellant
None appears
...for respondent

The Court :- This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata (Tribunal) dated 28th July, 2003 in ITA No. 2398(Cal) of 2002 for the assessment year 1998-99.

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

"Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in law by not holding that the interest on loan utilised for purchase of acquiring share against which assessee received dividend is not an allowable expenditure on the ground that dividend income an income from other source and also no expenditure relating to the exempt income is allowable as deduction for determining the total income ?"

As per the office report the original case papers are not available and, therefore, on the direction issued by this Court the learned standing Counsel for appellant has submitted a photocopy of the same which shall be treated as original until the original case file is traced.

The revenue being aggrieved by the order passed by the Tribunal has preferred this appeal. On perusal of the order passed by the Tribunal we find that the matter has been remanded to the assessing officer for a fresh decision. The learned Tribunal has pointed out that in the case of *M/s. MAFATLAL HOLDINGS LTD.* the Bombay Bench of the Tribunal has decided in favour of the assessee in ITA/2935/M/2002 and in the case of the Group Company of the assessee the Calcutta Bench of the Tribunal has decided the issue in favour of the assessee in ITA/1367/Kol/2002. Therefore, the learned Tribunal set aside the order passed by the *COMMISSIONER OF INCOME TAX (APPEALS)* and remanded the matter back to the assessing officer to decide the issue in the light of the decision mentioned above. In our considered view since the matter has been remanded it will be well open to the assessing officer to consider all points including the issue as to whether the decision referred to the learned Tribunal could apply to the facts of the case of the assessee. Therefore, we find that there is no substantial questions of law arising for consideration in this appeal.

Accordingly, the appeal stands dismissed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH