OD-43

ORDER SHEET
ITAT/148/2021
IA NO:GA/2/2021
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION(INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF I.T., CENTRAL-1, KOLKATA
-VS-
M/S. RASHMI METALIKS LTD.

BEFORE:
HON'BLE JUSTICE T.S. SIVAGNANAM
AND
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

DATE: 7TH MARCH 2022.

Mr. P.K. Bhowmick, Adv., for appellant/petitioner.
Mr. A. Sengupta, Adv., for respondent.

The Court: This appeal by the revenue, filed under section 260A of the Income Tax Act, 1961, is directed against the order dated November 13, 2019, passed by the Income Tax Appellate Tribunal "B"

Bench, Kolkata, in ITA Nos.194 to 197 (Kol) of 2019 relating to the assessment years 2009-2010 to 2012-13. The revenue raised the following substantial questions of law:

"(i) Whether on the facts and the circumstances of the case and in law, the learned Income Tax Appellate Tribunal, Kolkata was justified in allowing deduction under section 80IA of the Income Tax Act, 1961 of Rs.17,62,41,550/- for income/profits arising from operation of private railway siding exclusively for the benefit of assessee only and therefore, it is not an infrastructure facility within the meaning of explanation to section 80IA(4)(I) of the Income Tax Act, 1961 and explanatory notes to the provision of the Finance Act, 2007 vide circular no.03/2008, dated 12.03.2008 and the order being perverse and as such the order of the learned Tribunal is not sustainable in law?

(ii) Whether on the facts and the circumstances of the case and in law, the learned Income Tax Appellate Tribunal, Kolkata was justified in allowing deduction under section 80IA of the Income Tax Act, 1961 for railway siding whereas from page no.89 of seized document marked as INDA-4, it is observed that the Sr. SCM, ORE, South Eastern Railway had issued a letter to the assessee related to evasion of railway freight and thereby violating provisions of law, against claim of deduction under section 80IA of the Income Tax Act, 1961 and hence the Hon'ble Income Tax Appellate Tribunal failed to appreciate the peculiar facts and circumstances of the case?

(iii) Whether on the facts and the circumstances of the case and in law, the learned Income Tax Appellate Tribunal erred by failing to appreciate the terms and conditions as per agreement entered, whereby there is no specific clause for developing or operating and maintaining or developing, operating and maintaining as per conditions of deduction under section 80IA of the Act, and whereas various Court decisions have held that strict interpretation of statutes is required for tax deductions/exemptions and hence the order being ultra vires?

(iv) Whether on the facts and the circumstances of the case and in law, the learned Income Tax Appellate Tribunal erred in holding that the assessee is entitled to deduction under section 80IA of the Act particularly in the light of freight evasion which could have an impact on the agreement with the railways?

(v) Whether on the facts and the circumstances of the case and in law, the learned Income Tax Appellate Tribunal erred in law in giving relief to the assessee only on the basis of its cancelling the order passed by the Principal Commissioner of Income Tax under section 263 of the Act, while the appeal under section 260A has been preferred against the very order of the learned Tribunal cancelling the order under section 263 of the Act before the Hon'ble High Court?"

We have heard the learned counsel for the parties. The order impugned in a connected appeal of the Appellate Tribunal arose out of an order giving effect to an order passed under section 263 of the Act. The said order passed under section 263 of the Act was appealed against and the Tribunal in ITA Nos.813 to 816/Kol/2017 allowed the appeals filed by the assessee by order dated May 2, 2018. The said order was put to challenge by the appellant-revenue in ITAT/75/2021 which was dismissed by this Hon'ble Court by Judgment dated January 31, 2022.

In light of the above development, the order impugned before us, passed by the Income Tax Appellate Tribunal "B" Bench, dated November 13, 2019, in ITA Nos.194 to 197(Kol) of 2019, for the assessment years 2009-10 to 2012-13, pursuant to orders passed under section 263 of the Act by dismissing the appeals before the Tribunal, nothing survives for consideration by this Court in this appeal.

The appeal along with the connected application accordingly stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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