OD-16

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

ITAT/44/2022
IA No: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX (EXEMPTION), KOLKATA
VERSUS
MAA SARASWATI GYAN MANDIR EDUCATION SOCIETY

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK

Date : 26th July, 2022

Appearance :-
Mr. Soumen Bhattacharjee, Adv.
... For Appellant
Mr. S.M. Surana, Adv.
Mr. Bhaskar Sengupta, Adv.
Md. Afzal Ansari, Adv.
... For Respondent

The Court : We have heard Mr. Soumen Bhattacharjee, learned Counsel appearing for the appellant and Mr. S.M. Surana, learned Senior Advocate appearing for the respondent.

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 10th January, 2020, passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata in I.T.A No. 2002 (Kol) of 2017, for the assessment year 2012-13.

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

(i) Whether on the facts and the circumstances of the case, disallowance of Rs.2,84,67,351/- claimed towards depreciation. The Learned Income Tax Appellate Tribunal has relied on the decision of the Hon'ble High Court in the case of Siliguri Regulated Market Committee (2014) 366 ITR 51, which has been accepted by the department. Moreover, on this issue, Hon'ble Supreme Court has dismissed departmental appeal in the case of Rajasthan and Gujarat Charitable Foundation, Poona ?

(ii) Whether the addition of Rs.8,40,000/- towards capital gain from sale of cars. The Learned Income Tax Appellant Tribunal has considered that capital gain from sale of cars would qualify for exemption under section 11(1A) of the Act since the tax effect on this issue is less than the threshold limit?

(iii) Whether disallowance of exemption under section 11(1)(a) on administrative and establishment expenses of Rs.3,54,12,977/-. On this issue, the department has accepted the decision of Hon'ble Calcutta High Court in the case of Birla Janahit Trust reported in 208 ITR 372?

(iv) Whether disallowance of set off of earlier years of losses of Rs.6,04,16,031/- The Income Tax Appellant Tribunal has referred to several decisions of Hon'ble Courts as well as

Tribunals. However, Hon'ble Supreme Court has allowed the losses in two decisions viz. (i) in the case of Rajasthan and Gujarat Charitable Foundation, Poona and (ii) in the case of Civil appeal No.5171 of 2016 in the Case of CIT Vs. Subros Education Society?

(v) Whether disallowance of set off of losses of Rs.1,14,75,323/- from running of school bus and Rs.20,56,394/- from running of hostel. The Income Tax Appellant Tribunal has referred to several decisions of Hon'ble Courts as well as Tribunals. However, Hon'ble Supreme Court has allowed the losses in two decisions viz. (i) in the case of Rajasthan and Gujarat Charitable Foundation, Poona and (ii) in the case of Civil appeal No.5171 of 2016 in the Case of CIT Vs. Subros Education Society ?

We have heard Mr. Soumen Bhattacharjee, learned Counsel appearing for the appellant/revenue and Mr. S.M. Surana, learned Senior Advocate appearing for the respondent/assessee.

On going through the substantial questions of law as suggested by the revenue, we find that the revenue has accepted the legal position, more particularly, the decisions which have been referred to in question nos.1, 3, 4 and 5.

If such is the position, the revenue cannot pursue the matter and seek to canvass a case which is contrary to what they have submitted before this Court. If the issues raised in substantial questions of law nos.1, 3, 4 and 5 are to be decided against the revenue as admitted by them, then substantial question of law no.2 cannot be pursued as the tax effect is less than the threshold limit.

For the above reasons, the appeal filed by the revenue is dismissed.

With the dismissal of the appeal, the stay application also is dismissed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

B.PAL/SN.
AR(CR)