OD-24

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

ITAT/67/2022
IA No. GA/2/2022

PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA
VS
M/S KESORAM INDUSTRIES LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 20th December, 2022

Appearance :
Mr. Prithu Dudhoria, Adv.
Mr. Vipul Kundalia, 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 is directed against the order dated 28th October, 2021 passed by the Income Tax Appellate Tribunal, 'C' Bench, Kolkata in ITA Nos.1650 & 1864/Kol/2019 for the Assessment Year 2015-16.

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 Income Tax Appellate Tribunal has erred in law in not appreciating that arm's length price and fair market value are two different concepts and the role of Transfer Pricing Officer is limited to determination of arm's length price ?

ii) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law as well as on facts by not appreciating that in case where the monetary threshold as per section 92BA is crossed, market value has to mean the arm'' length price or ALP i.e.., as per limb (ii) of the said explanation ?

iii) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law as well as in facts in not analyzing the claim of deduction allowable under the provision of Section 80IA read with Section 92BA and 92F of the Income Tax Act, 1961 and relevant judicial pronouncement of the jurisdictional Hon'ble Calcutta High Court ?

iv) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in not appreciating that tariff orders are regulated but not controlled and therefore rates of sale of power by generating company to distributing company serve as valid CUP ?

v) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in not appreciating that there is significant difference between distribution tariff and generation tariff and such cost of differences are real and not imaginary ?

vi) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in granting relief on account of discount allowed to various parties while the sales were already recognized after netted off the discounts ?

vii) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in dismissing the ground of the revenue, relating to the addition made under section 68 of the Income Tax Act, 1961, stating that the said ground was not relevant to the order of the lower authorities ?

We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned Senior Advocate for the respondent/assessee.

It is pointed out by the learned Senior Counsel appearing for the respondent/assessee that the substantial questions of law (a), (c), (d), (f) and (g) in the stay application though raised by the revenue, have become academic in the instant case as no deduction has been allowed by the Assessing Officer as there was no gross total income during the assessment year under consideration namely, Accounting Year 2015-16. In this regard, our attention has been drawn to the assessment order dated 31st December, 2018 and on perusal of the computation of total income under normal provisions, we find no gross total income had arisen in the said assessment year. For better appreciation, the same is quoted hereinbelow :-

"Computation of Total Income under Normal Provisions

	Amount(Rs)	**Amount(Rs)**
Total Income as per Modified Computation of Income		
Add :		

(i) Delay in employee's contribution	30,132	
(ii) Disallowance u/s 14A	1,29,47,275	
(iii) Disallowance of discount	2,16,05,442	
(iv) Disallowance u/s 68	1,82,30,000	5,28,12,849
Total Income		**5,28,12,849**
Less : Unabsorbed Depreciation set off		**(5,28,12,849)**
Assessed Income		**-**
Tax		**-**

Determination of Book Profit u/s 115JB

	Amount(Rs)	Amount(Rs)
Book Profit u/s 115JB as per modified computation of Income		(2,99,80,07,511)
Add : Disallowance u/s 14A		1,29,47,275
Revised Book Profit		**(2,98,50,60,236)**
Tax @ 18.5%		

Assessed u/s. 143(3) r.w. 92CA of the Income Tax Act, 1961 at **Rs.Nil/-.** Issue copy of order, computation of tax, demand notice and penalty notice to the assessee."

In the light of the above undisputed position, the substantial questions of law (a), (c), (d), (f) and (g) have become academic and need not be decided in this appeal and consequently, they are left open.

So far as the substantial question of law (h) is concerned, we find that the decision of the learned Tribunal has been rendered appreciating facts and circumstances of the case which have not been shown to be perverse or unsustainable. Therefore, no such substantial question of law arises for consideration.

So far as the substantial question of law (i) is concerned, it seen from the order of the learned Tribunal that it does not arise out of the order of the Tribunal and therefore, the same stands rejected.

In the result, the appeal is dismissed and it is held that substantial questions of law (a), (c), (d), (f) and (g) have become academic for the assessment year under consideration and therefore they are left open.

The substantial questions of law (h) and (i) are rejected.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/SN.