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

ITAT/233/2011
IA No:GA/1/2011 (Old No.:GA/2503/2011)
COMMISSIONER OF INCOME TAX, KOLKATA – II
VERSUS
M/S. V.N. ENTERPRISES LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 4TH MAY, 2022.

Appearance:-
Mr. Prithu Dudheria, Adv.
...for Appellant
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
... for 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 25th March, 2011, passed by the Income Tax Appellate Tribunal, `A' Bench, Kolkata in ITA No.1778 of 2008 for the assessment years 2004-05.

The revenue has suggested the following substantial question of law for consideration :-

(a) Whether on the facts and circumstances of the case, the learned Tribunal is justified in law in allowing the expenditure of Rs.12,76,000/- relating to establishment and administrative expenses under Section 37(1) of the Income Tax Act without considering the fact that during the period there was no business carried on by the assessee ?

(b) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in law in deleting the disallowance of claim of business loss to the tune of Rs.2,04,94,278/- under Section 37 of the Income Tax Act, 1961 without considering the order of assessment that there was no export or allied activities and no earning of foreign exchange ?

We have heard Mr. Prithu Dudheria, learned standing counsel appearing for the appellant and Ms. Swapna Das, learned Advocate with Mr. Siddhartha Das, Advocate appearing for the respondent/assessee.

The appeal filed by the revenue was directed against the order passed by the Commissioner of Income Tax (Appeals)-IV, Kolkata [CIT(A)] by order dated 2nd February, 2007. By the said order the CIT(A) had extensively examined the factual position and granted relief to the assessee by allowing the appeal. Aggrieved by the same, the revenue has preferred appeal before the Tribunal. The Tribunal on its part re-examined the factual position and more importantly, noted that the appellant/department did not dispute the genuineness of the claim of the assessee, the details of which were placed on record along with the return of income filed by the assessee. Therefore, the Tribunal came to the conclusion that there is no justification for interfering with the order passed by the CIT(A). That apart, the explanation offered by the assessee was also taken into consideration both by the CIT(A) as well as the Tribunal as the assessee was required to maintain its business establishment and to meet the expenses on account of establishment and administrative expenses though no export took place due to political unrest in Iraq.

Thus, we find that there is no question of law, much less substantial question of law, arising for consideration in this appeal.

Accordingly, the appeal stands dismissed.

The stay application being IA No:GA/1/2011 (Old No.:GA/2503/2011) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/GH.
AR(CR)