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ITAT/416/2017
IA No.GA/2/2017 (Old No. GA/3804/2017)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, KOLKATA

-Versus-

M/S. REI AGRO LIMITED

Appearance:
Mr. Debasish Chaudhuri, Adv.
...for the appellant.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 7th March, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax, 1961 (the 'Act' in brevity) is directed against the order dated 31st March, 2017 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (in short the 'Tribunal') in ITA Nos.152 and 153/Kol/2014 for the assessment years 2010-11 and 2011-12.

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

i) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, "C" Bench, Kolkata has erred in law in* *deleting the addition made by the Assessing Officer under Section 36(1)(va) read with Section 2(24)(x) of the Income Tax Act, 1961 on account of delayed deposit of employees' contribution towards PF/ESI without considering CBDT's Circular No.22 of 2015 dated December 17, 2015 ?*

ii) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, "C" Bench, Kolkata has erred in law in holding that the disallowances under Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 is to be in relating to the income which does not form a part of the total income and this can be done only by taking into consideration the investment which has given rise to this income which does not form part of the total income while as per Rule 8D, those investments are also to be taken income from which shall not form part of the total income ?

We have heard Mr. Debasish Chaudhuri, learned standing counsel appearing for the appellant/revenue.

The second substantial question of law framed for consideration is with regard to disallowance under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962. We have perused the order passed by the tribunal which affirmed the order passed by the Commissioner of Income Tax (Appeals) Central-II, Kolkata [CIT(A)]. Identical issue arose in the assessee's own case for the assessment year 2008-09 which was decided in favour of the assessee by the CIT(A) and confirmed by the tribunal. The revenue preferred appeal before this Court and the appeal has been dismissed by judgment dated 9th April, 2014.

Thus, applying the decision of this Court, the said issue was decided against the revenue and in favour of the assessee, we find no ground to take a different view in the matter as the said issue has already been decided in favour of the assessee in the assessee's own case for earlier assessment years. Accordingly, substantial question of law no.2 is rejected.

So far as the first substantial question of law is concerned, we note that identical issue has been entertained by this Court in other appeals filed by the revenue and appeals have been admitted as well. However, in the instant case, we find the tax liability in so far as the disallowance of payment of Provident Fund and ESI is far below the threshold limit in both the assessment years which would prevent the appellant/Department from pursuing this appeal. However, taking note of the fact that similar substantial question of law has already been admitted in other cases, we leave this question of law open to be decided in an appropriate case.

In the result, the appeal filed by the revenue is dismissed. Substantial question of law no.2 is answered against the revenue and substantial question of law no.1 is left open as we have dismissed the appeal against the revenue on the said issue on the ground of low tax effect.

Consequently, the connected application for stay being IA No.GA/2/2017 (Old No.GA/3804/2017) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As/RS