

OD-19

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

ITAT/125/2022
IA NO: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX, (CENTRAL)-1, KOLKATA
VS.
M/s. MBL INFRASTRUCTURE LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 12, 2022.

Appearance:
Mr. Tilak Mitra, Adv.
... for appellant
Mr. J.P. Khaitan, Sr. Adv.
...for respondent

The Court :- This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 22nd October 2020 passed in ITA No. 427/Kol/2018 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration :-

- i) WHETHER in the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal has erred in quashing the reversionary order under section 263 passed by the Learned Pr. Commissioner of Income Tax as bad in law thereby deleting the addition of Rs.18,88,58,130/0 made on the basis of disallowance of claim of deduction u/s 80IA of the Act ?

- ii) WHETHER in the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal has erred in ignoring that Assessing Officer did not apply correct assumption of fact and correct application of law on the issue of deduction u/s 80IA of the Act which makes assessment order erroneous and prejudicial to the interest of revenue as held by Hon'ble Apex Act in the case of Malabar Industrial Co. Ltd. Vs. CIT [243 ITR 83] ?

We have heard Mr. Tilak Mitra, learned standing Counsel for the appellant and Mr.J. P. Khaitan, learned Senior Advocate for the respondent.

The short issue involved in the instant appeal is whether the Commissioner of Income Tax was justifying in assuming jurisdiction under Section 263 of the Act. We have elaborately heard the submissions of learned Advocate on either side and carefully perused the order and the reasons assigned by the learned Tribunal.

In paragraph 9 of the impugned order, learned Tribunal has noted the factual contend namely with regard to the purchases which were undertaken by the respondent/assessee as also the terms and conditions of the agreement entered into by the assessee with the concerned highways department and having been factually satisfied that the deduction claimed by the assessee is admissible, had granted relief. More importantly the Tribunal had taken note of the fact that for the previous assessment years 2010-11 the learned Tribunal had adjudicated the issue and had granted relief for assessee and for the subsequent years 2013-14 and 2014-15 no disallowance has been made under Section 80IA of the Act. That apart the learned Tribunal has also taken note of various decisions of the Hon'ble Supreme Court which

had laid down the legal principle as to what and under what circumstances the Commissioner of Income Tax can exercise power under Section 263 of the Act.

The revenue has not disputed before us that no disallowance was made in the previous two assessment years as well as the subsequent two assessment years. Thus in the absence of any distinguished feature in the nature of contract the Rule of Consistency has to be applied. Thus we find that no questions of law, much less substantial questions of law arises for consideration in this appeal.

Accordingly, the appeal fails and dismissed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)