

OD-28

ITAT/174/2022
IA No.GA/2/2022

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF
INCOME TAX-1, KOLKATA

-Versus-

M/S. ASIAN HOTELS EAST LTD.

Appearance:

Mr. Soumen Bhattacharyya, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Mrigank Kejriwal, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 20th December, 2022.

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 10th June, 2020 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.114/Kol/2019 for the assessment year 2012-13.

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

- (i) *Whether the assessee was entitled to get deduction under Section 35DD of the said Act or not ?*
- (ii) *Whether the assessee was entitled to get deduction in respect of the expenditure incurred by the assessee in relation to the income which does not form part of the total income in terms of the Section 14A along with Rule 8D of the said Act or not ?*

We have heard Mr. Soumen Bhattacharyya, learned standing counsel appearing for the appellant/revenue and Mr. J. P. Khaitan, learned senior counsel assisted by Mr. Pratyush Jhunjhwal and Mr. Mrigank Kejriwal, learned Advocates for the respondent/assessee.

So far as the first substantial question of law is concerned, namely, with regard to the deduction under Section 35DD, the learned Tribunal noted that for the assessment years 2010-11 and 2011-12, the assessing officer himself had allowed the deduction and this was taken note of apart from the fact that the deduction under Section 35DD is a continuing one and when the deduction was allowed in the earlier two assessment years, in absence of any fresh material, the Department could not have taken a different stand. Thus, we find that on facts, the learned tribunal had granted relief and no substantial question of law arises for consideration in this regard.

So far as the second question is concerned, the Commissioner of Income Tax (Appeals) had directed the assessing officer to restrict the disallowance under Rule 8D(2)(iii) by considering only those investments which have yielded tax-free income during the year. The learned Tribunal took note of the decision of a co-ordinate Bench of the Tribunal in *REI Agro Limited vs. DCIT* in ITAT/1331/Kol/2011 which was affirmed by this Court in ITAT/220/2013.

Thus, we find that the legal position has been rightly noted by the learned after considering the factual position. Therefore, the second question suggested by the revenue also does not fall for consideration.

Hence, the appeal filed by the revenue (ITAT/174/2022) fails and is dismissed.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)