OD-26

ITAT/145/2014
IA NO.GA/1/2014 (Old No.GA/2988/2014)

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

COMMISSIONER OF INCOME TAX,
KOLKATA-1, KOLKATA

-Versus-

GARDEN REACH SHIPBUILDERS &
ENGINEERS LTD.

Appearance:
*Ms. Smita Das De, Adv.*
*...for the appellant.*

*Mr. Debashish Mitra, Adv.*
*Mr. Siddharth Das, Adv.*
*...for the respondent.*

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

Date : 21st June, 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 31st March, 2014 passed by the Income Tax Appellate Tribunal 'B' Bench, Kolkata in ITA No.278/Kol/2012 for the assessment year 2008-09.

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 Ld. Tribunal has erred in law in deleting the addition of Rs.32,93,75,797/- made by the Assessing Officer on account of provision of Liquidated Damages?*

*ii) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in disregarding concurrent finding of both the Assessing Officer and CIT(Appeals) that aforesaid claim of Rs.32,93,75,797/- could not be regarded as liability since it was not supported by any realistic estimate to a reasonable certainties and therefore, not crystalized during the previous year?*

We have heard Ms. Smita Das De, learned standing counsel for the appellant/revenue and Mr. Debashish Mitra, learned counsel assisted by Mr. Siddharth Das, learned advocate appearing for the respondent/assessee.

We need not labour much to decide the substantial questions of law in the instant case on account of earlier decision of this Court in the assessee's own case in ITA No.724 of 2017 dated 15th January, 2008 pertaining to the assessment year 2003-04. Identical issue was considered by the tribunal and relief was granted by deleting the addition made by the assessing officer and affirmed by the CIT(A). Further, it is submitted by the learned advocate for the respondent that for the assessment years 2004-05 and 2005-06 identical issue arose for consideration and the CIT(A) deleted the addition and the department though filed an appeal before the tribunal but did not agitate the said ground before the tribunal. For the assessment years 2006-07 and 2007-08 no addition has been made by the assessing officer on the said ground.

In the light of the above facts, a consistent approach is required to be maintained by the income tax department when identical issues were dealt with in the previous assessment year and there are no distinguishing factors in any particular assessment year for the assessing officer to depart from this earlier year. The revenue has not been able to show as to any distinguishing feature in the case on hand as to that of the facts which are involved in the assessment years 2003-04 and 2007-08. In fact, for the assessment years 2006-07 and 2007-08 on the said issue there was no addition made by the assessing officer himself.

For the above reasons, we find that there is no error in the order passed by the tribunal. Accordingly, the appeal fails and the same stands dismissed. The substantial questions of law are answered against the revenue.

With the dismissal of the appeal, the connected application (IA No.GA/1/2014) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s/S.Das