

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

ITAT/244/2022  
IA No. GA/2/2022

PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA  
VS  
M/S KESORAM INDUSTRIES LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 20<sup>th</sup> December, 2022

Appearance :

*Mr. Om Narain Rai, Adv.*

*Mr. Soumen Bhattacharjee, Adv.*

*...for the appellant.*

*Mr. J.P. Khaitan, Sr. Adv.*

*Ms. Nilanjana Banerjee Pal, Adv.*

*...for the 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 29<sup>th</sup> November, 2019 passed by the Income Tax Appellate Tribunal, 'C' Bench, Kolkata in ITA No.1443/Kol/2019 for the Assessment Year 2013-14.

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

- A) Whether on the facts and circumstances of the case and in law the learned ITAT is erred in upholding the internal CUP applied by the assessee to benchmark the transaction to its Associated Agencies as well as claiming deduction upto that extent u/s 80-IA of the Income Tax Act, 1961 without

considering the explanation to section 80-IA(8) of the Act with regards to the market value in relation to any goods or services?

- B) Whether on the facts and circumstances of the case and in law the learned ITAT is erred in not appreciating the finding of the TPO that the assessee's generating unit cannot as such claim any benefit under section 80-IA of the Act computed on the basis of the rates charged by the distribution licensee from the consumer and benefit can only be claimed on the basis of the rates fixed by the tariff regulation commission for sale of electricity by the generating companies to the distributing company?
- C) Whether on the facts and circumstances of the case and in law the Learned Income Tax Appellate Tribunal is erred in not analyzing the claim of deduction allowable under the provisions of section 80-IA read with section 92BA and 92F of the Income Tax Act, 1961 and relevant judicial pronouncement of the jurisdictional High Court?
- D) Whether on the facts and circumstances of the case and in law the Learned Income Tax Appellate Tribunal is erred in not appreciating that arm's length price and fair market value are two different concepts and the role of the TPO is limited to determination of Arm's Length Price?
- E) Whether the order of the Learned Income Tax Appellate Tribunal in deleting the disallowance/addition made by the Assessing Officer was perverse having regard to the evidence and material on record?

We have heard Mr. Om Narain Rai, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned Senior Advocate for the respondent/assessee.

It is pointed out by the learned Senior Counsel appearing for the respondent/assessee that the substantial questions of law though raised by the revenue, have become academic in the instant case as no deduction has been allowed by the Assessing Officer as there was no gross total income during the assessment year under consideration namely, Accounting Year 2015-16. In this regard, our attention has been drawn to the assessment order dated 31<sup>st</sup> December, 2018 and on perusal of the computation of total income at a normal provision, we find no gross total income had arisen in the said assessment year. For better appreciation, the same is quoted hereinbelow :-

**“Computation of Income under Normal Provision:**

|                                           |     |                    |
|-------------------------------------------|-----|--------------------|
| Total Income as per Computation of Income | (-) | Rs.373,29,41,324/- |
|-------------------------------------------|-----|--------------------|

Add :

|                                      |     |               |                    |
|--------------------------------------|-----|---------------|--------------------|
| (i) Delay in employee's contribution | Rs. | 1,26,950/-    |                    |
| (ii) Disallowance of discount        | Rs. | 2,68,68,881/- |                    |
| (iv) Disallowance u/s. 14A           | Rs. | 67,60,104/-   | Rs.3,37,55,935/-   |
|                                      | (-) |               | Rs.369,91,85,389/- |

|                        |     |                            |
|------------------------|-----|----------------------------|
| <b>Assessed Income</b> | (-) | <b>Rs. 369,91,85,389/-</b> |
| Tax                    |     | Rs. Nil                    |

**Determination of Book Profit u/s 115JB**

|                                                |     |                     |
|------------------------------------------------|-----|---------------------|
| Book Profit u/s. 115JB as per return of income | (-) | Rs. 383,18,02,614/- |
|------------------------------------------------|-----|---------------------|

Add:

|                                       |     |                            |
|---------------------------------------|-----|----------------------------|
| (i) Provisional Disallowance u/s. 14A | Rs. | 67,60,104/-                |
| <b>Revised Book Profit</b>            | (-) | <b>Rs. 382,50,42,510/-</b> |

|                      |  |         |
|----------------------|--|---------|
| Tax @ 18.5% on above |  | Rs. Nil |
|----------------------|--|---------|

Assessed u/s. 143(3) of the Income Tax Act, 1961 at a loss of **Rs.369,91,85,389/-**. Issue copy of order, computation of tax and demand notice to the assessee.”

In the light of the undisputed position, the substantial questions of law have become academic and need not be decided in this appeal and consequently, they are left open.

In the result, the appeal is dismissed and it is held that substantial questions of law have become academic for the assessment year under consideration and therefore they are left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/SN.