OD – 9

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

ITA/364/2003

COMMISIONER OF INCOME TAX, KOLKATA – II
VS.
PROJAPATI INVESTMENT & TRADING CO. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : February 22, 2022.

[Via Video Conference]

Appearance :
Mr. Soumen Bhattacharjee, Adv.
... for the appellant

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act for brevity) is directed against the order dated December 20, 2002 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in ITA No. 1164/Cal/2001 for the assessment year 1998-99.

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

i. *Whether in the facts and circumstances of the case Learned Tribunal was justified in upholding the benefit of provisions of Section 49(1)(iii)(a) of Income Tax Act, 1961?*

ii. *Whether the Learned Tribunal was justified in upholding the order of the Commissioner of Income*

Tax (Appeals) to recompute the capital gains of the shares?

We have heard Mr. Soumen Bhattacharjee, learned counsel for the appellant/revenue.

On perusal of the order passed by the Tribunal, we find that the Tribunal followed its earlier order in the assessee's own case for the assessment year 1997-98 and dismissed the appeal filed by the revenue. Though it was submitted before the Tribunal that as against the earlier order passed by the Tribunal for the assessment year 1997-98, the department had filed an appeal before this Court, this submission was not supported by producing necessary orders showing that the appeal had been preferred. Furthermore, on perusal of the memorandum of appeal filed before this Court, we find that there is no averment to the appeal that the order passed by the Tribunal for the assessment year 1997-98 has been appealed against. That apart we find from the order of the assessment the tax assessed is only Rs.19,47,586/-. Therefore, in any event, the revenue cannot pursue this appeal.

Thus, for the above reasons, the appeal stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH