OD–9

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

ITA/1/2010
COMMISSIONER OF INCOME TAX, CENTRAL-III, KOLKATA
VS.
M/S.TODAY'S WRITING PRODUCTS LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st March, 2023

<u>Appearance</u> :
Mr. Prithu Dudhoria, Adv.
…for appellant

The Court : - 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 21.8.2009 passed by the Learned Income Tax Appellate Tribunal "A" Bench, Kolkata in I.T.A. No. 1836 (Kol) of 2008 for the Assessment Year 2005-2006.

The appeal was admitted on 22.2.2010 on the following substantial questions of law :-

i) Whether on the facts and in the circumstances of the case and on a true construction of the ambit and effect of section 80IB of the Income Tax Act, 1961 the learned Tribunal erred in law in not appreciating the materials on record, viz. disparity in the profit ratio between unit No. III, which was eligible for 100% deduction and that of unit No. II which was eligible for 30% deduction notwithstanding identical turnover and production/manufacture of identical goods scrutiny report of the assessing officer in section 10 CCB report, rendering the impugned order perverse ?

ii) Whether on the facts and in the circumstances of the case the learned Tribunal erred in law in placing exclusive reliance on the audited accounts of the assessee which had been rejected by the assessing officer, even though the primary evidence, i.e. the books of accounts had been destroyed by fire ?”

We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant.

Though the appeal was admitted in February 2010 and Notice of appeal was directed to be issued to the respondent/assessee till date the department has not taken any steps to serve the respondent.

The issue involved in this appeal is with regard to the deduction allowable under Section 80IB of the Act. There assessing officer estimated the profit solely on the ground that the records were not produced by the assessee as they were destroyed in a fire accident. The assessee carried the matter on appeal to the Commissioner of Income Tax, Appeals but allowed the appeal observing that the books of accounts might have bee destroyed but the audit report cannot be rejected and the unit wise net profit disclosed in the accounting records as certified by the auditors have to be accepted and before the learned Tribunal the factual position could not be controverted by the revenue. In paragraph 9 of the impugned order the learned Tribunal has recorded that the factual position could not be contradicted by the department and, therefore affirmed the order passed by the Commissioner of Income Tax, Appeals.

In the light of the said factual position we find no ground to interfere with the order passed by the learned Tribunal. Accordingly, the appeal fails and is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.