ORDER OD – 7

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

ITA/73/2011
IA NO: GA/2/2010 (Old No: GA/3227/2010)

COMMISSIONER OF INCOME TAX, KOLKATA – XII
VERSUS
M/S. TARA EXPORTS

BEFORE:

The Hon'ble Justice SURYA PRAKASH KESARWANI
The Hon'ble Justice RAJARSHI BHARADWAJ

Date : 6th December 2023.

Appearance:

Mr. S.S. Sarkar, Advocate
... for appellant.

Mr. Avra Mazumder, Advocate
Mr. B.N. Paul, Advocate
Mr. Samrat Das, Advocate
Ms. Elina Dey, Advocate
... for respondent.

1. Heard learned counsel for the appellant and learned counsel for the respondent.

2. This appeal has been admitted by order dated 14.02.2011, on the following substantial question of law:-

> "Whether the Learned Tribunal below committed substantial error of law in allowing the appeal of the assessee by relying upon the decision of the Special Bench ITAT Mumbai in the case of M/s. Top Man Exports & Ors., which has been set aside by the Division Bench of the Bombay High Court in the case of

Commissioner of Income Tax Vs. Kalpataru Colours & Chemicals reported in 2010 (328) ITR 451 (Bombay)?"

3. Both the learned counsel for the parties jointly state that the question raised in the present appeal is squarely covered by the judgment of Hon'ble Supreme Court in Topman Exports v. Commissioner of Income Tax, Mumbai reported in 342 ITR 49 SC and another judgment of Hon'ble Supreme Court in Johnson G. Onmen v. Commissioner of Income Tax (Central) reported in (2023) 295 Taxman 221 (SC) on the question of prospectivity of the Tax Amendment Laws, 2005. Both the learned counsel for the parties jointly state that the afore-quoted substantial question of law is covered by the judgment in the case of Topman Exports (supra) against the revenue and therefore, the question needs to be answered in negative i.e. in favour of the assessee and against the revenue.

4. In view of the aforesaid, the appeal is dismissed. The substantial question of law as framed above is answered in favour of the assessee and against the revenue.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar