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

ITAT/23/2023
IA NO. GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL 1, KOLKATA
VS.
M/S. SURENDRA STEELS PVT. LTD.

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd April, 2023

Appearance :
Mr. Soumen Bhattacharjee, Adv.
....for appellant
Mr. Subash Agarwal, Adv.
...for respondent

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 20th May, 2022 passed by the Income tax Appellate Tribunal, `B' Bench, Kolkata in ITA No.78/Kol./2022 for the assessment year 2019-20. The revenue has raised the following substantial question of law for consideration : -

> "Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in deleting the addition made on account of disallowance of deduction under Section 80-IC of the Act ? "

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel appearing for the appellant/revenue and Mr. Subash Agarwal, learned Counsel appearing for the respondent/assessee.

The short issue which falls for consideration is whether the non-submission of Form 10CCB along with the Return can be a ground to deny the benefit of the deduction under Section 80-IC of the Act. The learned Tribunal, in our view, rightly took note of the decision of the Hon'ble Supreme Court in *C.I.T vs. G.M. Knitting Industries Pvt. Ltd., 376 ITR 456* and held that a mere procedural irregularity is not fatal to claim deduction under Section 80-IC of the Act. In the case of *M/s. Winro Commercial (India) Ltd. vs. Principal Commissioner of Income Tax-1 and Anr.*, ITAT 237 of 2022, dated 22nd November, 2022, this Court had considered the similar issue where the assessee failed to attach the audit report of claim deduction along with the Return of income. That being only a procedural lapse, the Court held that the assessee cannot be non-suited on the said ground. The decision of the High Court of Delhi in the case of *Commissioner of Income Tax, Delhi vs. Contimeter Electricals Private Limited, 2009 178, taxmann.com, 422 (Delhi)* and the decision of this Court in the case of *Murali Export House vs. Commissioner of Income Tax, 1999, 238 ITR 257 (Cal.)* were referred to.

Thus, the Tribunal rightly decided the issue in favour of the assessee and against the revenue.

In the result, the appeal fails and the substantial question of law is answered against the revenue.

The stay application is also dismissed.

(T.S. SIVAGNANAM, J.)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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