OD-2

ITA/46/2009

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

VOLVOX ATLANTA B.(FORMERLY VAN OORD ATLANTA B.V.)

-Versus-

COMMISSIONER OF INCOME TAX (APPEALS)-XL, KOLKATA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 14th March, 2023

Appearance :
Mr. J. P. Khaitan, Sr. Adv.
Ms. Swapna Das, Adv.
Ms. Sanjukta Gupta, Adv.
...for the appellant

Ms. Smita Das De, Adv.
...for the respondent.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 30th September, 2008 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.1142/Kol/2008 for the assessment year 2003-04.

The appeal was admitted on 23rd February, 2010 on the following substantial questions of law:

(i) *Whether on the facts and circumstances of the case the Tribunal erred in law in holding that the CIT(A) was right in not admitting the additional ground of appeal in appeal proceedings against an order passed under Section 154 of the Act since the issue raised as per the additional ground did not arise from the order passed by the Assessing Officer under the said Section ?*

(ii) *Whether on the facts and circumstances of the case the Tribunal erred in law in holding that the issue whether the appellant had a permanent establishment in India and was liable to tax in India during the relevant assessment year arose out of the order passed under Section 143(3) and not under Section 154 of the Act ?*

We have heard Mr. J. P. Khaitan, learned senior counsel assisted by Ms. Swapna Das and Ms. Sanjukta Gupta, learned Advocates for the appellant/assessee and Ms. Smita Das De, learned standing counsel for the respondent/revenue.

Learned senior counsel for the appellant submitted that in the light of the judgment of this Court dated 14th March, 2023 dismissing ITA/121/2019, filed by the revenue, the assessee seeks leave to withdraw this appeal as not pressed.

In the light of the above submission, the appeal (ITA/46/2009) is dismissed as not pressed and the substantial questions of law are left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As./K.Banerjee