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

ITAT/44/2018
IA No.: GA/2/2018 (Old No. GA/537/2018)
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-2, KOLKATA
VS.
INDIAN BANK

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th February, 2023

Appearance :
Mr. Smarajit Roychowdhury, Adv.
Mr. Prithu Dudhoria, Adv.
Mr. Soumen Bhattacharjee, Adv.
... for appellant

Mr. C. Bhaskaran, Adv.
Ms. Swapna Das, Adv.
... for respondent

The Court : This appeal filed by the revenue filed under Section 260A of the Income Tax, 1961 (the Act) is directed against the order dated February 8, 2017 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA Nos.306 and 649/Kol/2013 for the assessment year 2009-10.

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

"(a) Whether on the facts and in the circumstances of the case the Tribunal has erred in law in deleting the addition made by the Assessing Officer in respect of Section 14A of Income Tax Act, 1961 read with Rule 8D of Income Tax Rules, 1962 ?

(b) Whether on the facts and in the circumstances of the case the Tribunal has erred in law in deleting the addition made by the Assessing Officer in respect of loss of Rs.78,09,87,000/- arising due to revaluation of unsettled interest swap contract ?

(c) Whether on the facts and in the circumstances of the case the Tribunal has erred in law in deleting the addition made by the Assessing officer in respect of house property income of Rs.1,64,02,078/- where the annual value of the property was determined by invoking provisions of Sub-section (a) of Section 23 of the Income Tax Act, 1961 ?

We have heard Mr. Smarajit Roychowdhury, learned standing Counsel appearing for the appellant/revenue and Mr. C. Bhaskaran, learned counsel assisted by Ms. Swapna Das, learned advocate for the respondent/assessee.

So far as the substantial question of law no.(a) is concerned, identical issue was considered by this Court in the assessee's own case in ITAT 204 of 2017 and by judgment dated 10th February, 2023 the appeal was dismissed. In the instant case also, the learned Tribunal has done a thorough factual exercise and granted relief to the assessee. Thus, we find that there is no substantial question of law arising on the said issue.

So far as the substantial question of law no.(b) is concerned, it cannot be disputed by the revenue that the issue is squarely covered against the revenue by the decision of the Hon'ble Supreme Court in *PCIT vs. Suzlon Energy Ltd., (2020) 121 taxmann.com 137 (SC).* Identical question was also considered by this Court in the case of *PCIT vs. Himadri Chemicals & Industries Ltd., in ITAT 124 of 2021* dated 20th July, 2022 and in the case of *PCIT vs. Price Water House Coopers P. Ltd., in ITAT 269 of 2017* dated 17th December, 2021.

Thus, applying the above decision, the substantial question of law no.(b) is decided against the revenue.

With regard to the substantial question of law no.(c) is concerned, the issue is whether in the absence of any rent received by the respondent/assessee how the rental value of the premises/buildings has to be computed. The Assessing Officer arrrived at a value by referring to the website of majic bricks www.majic.brick.com and, accordingly, worked out the income under the house property. This order was interfered partly by the Commissioner of Income Tax (Appeals) by holding that the valuation of the municipal corporation has to be adopted. Aggrieved by such finding, the revenue preferred appeal before the learned Tribunal which was dismissed.

In our considered view, the finding rendered by the learned Tribunal approving the view taken by the CIT(A) that the valuation of the municipal corporation has to be accepted lays down the correct legal principle. In this regard, we place reliance on the decision of this Court in the case of Commissioner of Income Tax vs. Poddar Bros (P) Ltd., (1999) 240 ITR 925 (Cal.).

Thus, the substantial question of law no.(c) is decided against the revenue.

In the result, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

The stay application being IA No.: GA/2/2018 (Old No. GA/537/2018) is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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