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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

ITAT/66/2010

COMMISSIONER OF INCOME TAX, KOLKATA – II, KOLKATA
-Versus-
M/S. USHA MARTIN VENTURES LTD.

Appearance:
Mr. Amit Sharma, Adv.
...for the appellant.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 17^{th} February, 2023

The Court : This appeal by the revenue under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 30^{th} September, 2009 passed by the Income Tax Appellate Tribunal, A - Bench, Kolkata (the 'Tribunal') in ITA No.576/Kol/2009 for the assessment year 2002-03.

This appeal was admitted on 22^{nd} April, 2010 for the following substantial question of law:

> "Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal substantially erred in law on holding that the Commissioner of Income Tax could not invoke the provisions of Section 263 in respect of the capital expenditure of Rs.1,60,75,000/-?"

We have heard Mr. Amit Sharma, learned counsel for the appellant/revenue.

The short issue involved in the instant case is whether the Commissioner of Income Tax (Appeals) [CIT(A)] could have assumed jurisdiction under Section 263 of the Act on an issue which was never the subject-matter of the assessment in a proceeding initiated under Section 147 of the Act. On facts, the learned Tribunal found that the issue of loss/expenditure incurred in respect of newly undertaken software product development project as capital loss/expenditure was not touched by the assessing officer in the reassessment proceedings under Section 147 of the Act. Therefore, the learned Tribunal found that the CIT(A) was not justified in invoking the provisions of Section 263 of the Act on an issue which was not the subject-matter of the reassessment of the proceedings. The decision rendered by the Tribunal takes note of the correct legal position and, therefore, does not call for any interference.

Hence, The appeal [ITA/66/2010] filed by the revenue stands dismissed and the substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/S. Chandra
AR[CR]