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

ITA/78/2009
COMMISSIONER OF INCOME TAX KOLKATA III KOLKATA
VS.
M/s. ERNST & YONGS PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8TH FEBRUARY, 2023

<u>Appearance</u> :
Mr. Smarajit Roychowdhury, Adv.
...for appellant
Mr. J. P. Khaitan, Sr. Adv.,
Mr. Akhkilesh Kr. Gupta, Adv.
Mr. Asim Chowdhury, Adv.
Mr. Soham Sen, Adv.
...for respondent

The Court : - Heard learned Counsel for either side.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 31.10.2018 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in ITA Nos. 1056 and 1014 (Kol) of 2008 for the assessment year 2004-05. The appeal was admitted on the following substantial questions of law:-

i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is correct in deleting the disallowance of Rs.1,24,35,722/- written off as bad debts and Rs.56,63,263/- being bad debts in respect of the amounts due from the foreign concerns as the assessee could not prove that they became bad and the permission of the Reserve Bank of India was not obtained as the foreign exchange was involved ?

ii) Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is correct in deleting the disallowance of Rs.8,01,430/- being provision for leave encashment inadmissible in terms of section 43B(f) of the Income-tax Act, 1961, as the amounts were not paid before the due date of the submission of the return ?

It is pointed out by the learned Senior Advocate for the respondent that respondent cannot pursue this appeal on the ground of low- tax effect. In this regard, the relevant figures were brought to our notice. Even going by the substantial questions of law which have been admitted for consideration, and taking note of the figures mentioned therein it is not clear that the tax effect will be much lesser than the threshold limit of Rs.1 crore fixed by the C.B.D.T. for the revenue to pursue this appeal before this Court. For the above reason, the appeal stands disposed of on the ground of low tax effect and the substantial questions of law are left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.