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

ITA/173/2017
IA No.: GA/2/2017 (Old No. GA/1461/2017)
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.
... 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 March 16, 2016, passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA Nos.2175 and 2070/Kol/2009 and 2176/Kol/2009 for the assessment years 2005-06 and 2006-07 respectively.

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

“(a) Whether, on a true and proper interpretation of the provisions contained in the Income Tax Act, 1961, the Tribunal was justified in law in holding that the provisions of section 115JB are not applicable in the case of Banking Companies?

(b) Whether in the facts and circumstances of the case the Tribunal was justified in law in upholding the order of the Commissioner of Income Tax (Appeals) allowing the deduction of Rs.138.83 Crores on account of provision for salary and wages arrears and its purported findings in this regard are arbitrary, unreasonable and perverse?

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 first substantial question of law is concerned, in the assessee’s own case in ITAT 344 of 2017 this Court by judgment dated 10th February, 2023 dismissed the appeal filed by the revenue by following the decision of this Court in the case of *PCIT vs. Damodar Valley Corporation, (2022) 137 taxmann.com 338 (Cal.)* and also taking note of the decision of the High Court of Karnataka in *Commissioner of Income-tax, LTU vs. Canara Bank, (2022) 135 taxmann.com 126 (Karnataka).*

In the light of the said decision, the substantial question of law no.(a) is answered against the revenue.

So far as the substantial question of law no.(b) is concerned, the said issue is squarely covered against the revenue in the light of the decision in Bharat

Earth Movers vs. Commissioner of Income-tax, [2000] 112 Taxman 61 (SC) wherein it was held as follows :-

> "4. The law is settled: if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied, the liability is not a contingent one. The liability is *in praesenti* though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain."

Thus, following the above decision, the substantial question of law no.(b) is answered 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/2/2017 (Old No. GA/1461/2017) is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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