OD - 15

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

ITAT/73/2023
IA No.GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
-Versus-
M/s. D.R. STEEL CONSTRUCTION CO. PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 17th May, 2023

Appearance :
Mr. Prithu Dudhoria, Adv.
...for the appellant

The Court : This appeal filed by the revenue under Section 260A of the Income Tax |Act, 1961(the Act) is directed against the order dated March 30, 2022 passed by the Income Tax Appellate Tribunal "A" Bench Kolkata in ITA No. 64/Kol/2022 for the assessment year 2013-14. 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 Learned Income Tax Appellate Tribunal has erred in law in deleting the addition of Rs.12,32,290/- without considering the fact that Assessee had failed to satisfactorily explained the admissibility of the claim before the Assessing officer and the Higher Appellate Authorities ?

(b) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in deleting the disallowance on account of payment of Sales Tax on earlier years ?

(c) WHETHER on the facts and circumstances of the case in law whether the ITAT was right in allowing the claim of deduction in full which was substantially reduced by the West Bengal Tax Tribunal (WBTT), as sales tax claim?

We have heard Mr. Dudhoria, learned standing counsel for the appellant. We find that the learned Tribunal after noting Section 43B of the Act and that the said provision commences with an non-obstantive clause has considered the factual position in the case on hand and has recorded the following findings :-

"*Now, going through the facts of the case, we find that the year under appeal is AY 2013-14. The alleged amount pertains to AY 2005-06 and AY 2010-11 and such liability did not exist at that point of time and, therefore, there was no possibility to make the payment during the relevant assessment year or before the due date of filing of return of income for such assessment year. The fact is that the liability of sales tax payment of Rs.12,32,290/- crystallized during the AY 2013-14 post sales tax assessment completion/sales tax proceedings. The assessee made the payment during the year which is not in dispute. Therefore, in our considered view provisions of Section 43B of the Act are squarely* *applicable on the alleged sum and the assessee as rightly claimed it as deduction against income for AY 2013-14. We, therefore, under the given facts and circumstances, find that the ld. CIT(A) erred in sustaining the disallowance made by the AO, as the alleged sum of Rs.12,32,290/- is eligible as a deduction against the income for AY 2013-14 as per provisions of Section 43B of the Act. The addition so made by the AO stands deleted and ground nos. 1 to 4 raised by the assessee in the instant appeal are allowed."*

The revenue is unable to dislodge the above factual conclusion arrived at by the learned Tribunal. Thus, we find no substantial questions of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal is dismissed so also the application.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.