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

ITA/204/2017
IA No.: GA/2/2017 (Old No. GA/1782/2017)
PRINCIPAL COMMISSIONER OF INCOME TAX-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 June 01, 2016 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No.1199/Kol/2012 and ITA No.1282/Kol/2012 for the assessment year 2008-09.

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, erred in law in holding the provisions of Section 115JB of Income Tax Act, 1961 are not applicable in the case of Banking Companies ?

(b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, erred in law in upholding the decision of CIT(A) restricting the disallowance to the extent of 1% of the exempt income without considering the provisions of Rule 8D of Income Tax Rule, 1963 ?

(c) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, erred in law in deleting the addition of Rs.108,45,17,830/- being amortization of premium paid for purchase of securities made by the Assessing Officer ?

(d) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, erred in law in reducing the addition of Rs.54,50,26,415/- made under Clause (f) of Explanation 1 to Section 115JB to Rs.4,20,90,323/- ?”

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 questions of law nos.(a) and (d) are concerned, in the assessee’s own case in ITAT 344 of 2017 and in ITAT 173 of 2017, by order dated 10th February, 2023 this Court has decided the substantial questions of law against the revenue by taking note of the decision of this Court in the case of *PCIT vs. Damodar Valley Corporation, (2022) 137 taxmann.com 338 (Cal.)* and also the decision of the High Court of Karnataka in *Commissioner of Income-tax, LTU vs. Canara Bank, (2022) 135 taxmann.com 126 (Karnataka).*

Following the said decision, the substantial questions of law nos.(a) and (d) are answered against the revenue.

With regard to the substantial question of law no.(b) is concerned, on perusal of the order passed by the learned Tribunal we find that the factual aspect has been gone into by the learned Tribunal and held that the basis of the calculation which was conveyed by the assessee to the Assessing Officer has not been brought on record and no deficiency in the estimation had been pointed out by the Assessing Officer.

Thus, taking note of several decisions of the various High Courts, on facts the learned Tribunal had held in favour of the assessee. Thus, we find that there is no substantial question of law arising on this issue. Accordingly, the substantial question of law no.(b) stands rejected on the ground that no substantial question of law arises for consideration.

With regard to the substantial question of law no.(c) is concerned, identical issue was decided in favour of the assessee for the assessment years 2007-08 as well 2009-10. The revenue has filed appeal before this Court being ITAT 381 of 2016 with regard to assessment year 2007-08, which was dismissed by this Court by order dated 4th May, 2018. Revenue also preferred appeal before this Court for the assessment year 2009-10 being ITA 11 of 2020, which was dismissed by order dated 12th February, 2020.

Thus, following the above decision in the assessee's own case for the earlier and subsequent assessment years, the substantial question of law no.(c) is answered against the revenue.

In the result, the appeal filed by the revenue is dismissed and the substantial questions of law nos.(a), (c) and (d) are answered against the revenue and the substantial question of law no.(b), in our opinion, entirely revolves upon facts and no substantial question of law arises on the said issue. .

The stay application being IA No.: GA/2/2017 (Old No. GA/1782/2017) is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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