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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOM TAX]
ORIGINAL SIDE

ITAT/93/2023
IA NO.GA/2/2023

PRINCIPAL COMMISSIONER OF INCOME TAX -2, KOLKATA
-Versus-
M/S. DEEPAK INDUSTRIES LTD.

BEFORE:

The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 12th May, 2023.

Appearance :
Mr.Soumen Bhattacharjee, Adv.
..for the appellant.

Mr. J.P. Khaitan, Sr. Adv.
Mr.A.P. Agarwalla, Adv.
...for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 23rd June, 2022 passed by the Income Tax Appellate Tribunal, C - Bench, Kolkata (the 'Tribunal') in ITA No.263 & 264/Kol/2020 and CO No.4/Kol/2021 for the assessment year 2015-16.

This appeal is admitted on the following substantial questions of law:

- "(a) *On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has erred in law in relying on the order u/s 143(3) of the Income Tax Act, 1961 for the A.Y. 2008-09 to 2013-14 and ignoring the fact that the case was not referred to TPO for Transfer Pricing proceeding in A.Y.s 2008-09 to 2013-14?*
- (b) *On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has perversely erred in law by applying the principle of consistency, by citing case law of Radhaswami Sastang Vs. C.I.T. in 193 ITR 321 (SC) which is not applicable in the instant case, since TP proceedings were never made in earlier A.Y.s 2008-09 to 2013-14?*
- (c) *On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has erred in law as well as in facts by violating rule 10B & 10C of Income Tax Rule, 1962 by not undertaking adequate comparability' analysis and 'reliable and accurate adjustments' in deleting the adjustments made by the TPO?*
- (d) *On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has erred in law as well as in facts by deleting the adjustments erroneously without taking into consideration the extraordinary difference in operating profitability*

between eligible and non-eligible unit of the assessee for determining the Arm's Length Price?

- (e) *On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has erred in law as it failed to appreciate that, by transferring the more profitability of the assessee to eligible unit, the assessee is taking advantage to claim more deduction under section 80IC of the Income Tax.*
- (f) *On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has erred in law as it failed to appreciate, in disallowing the claim of balance additional depreciation of Rs.60,66,115/- u/s 32(1)(iia), that the amendment regarding balance additional depreciation was brought into Finance Act, 2015 which has come into effect from 01.04.2016 and was prospective in nature?*
- (g) *On the facts and in the circumstances of the case and in law, whether the Hon'ble ITAT has erred in dismissing the appeal of revenue by relying upon the decision of the coordinate bench of the ITAT, Kolkata in the case of M/s. Birla Corporation Ltd. Vs. DCIT which predates amendment brought into the Section 32(1)(iia) of the Income Tax Act, 1961 in the Finance Act, 2015?*

We have heard Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant and Mr. J.P. Khaitan, learned senior counsel appearing for the respondent.

Though seven substantial questions of law have been raised, they can be categorised under two categories. The substantial questions of law (a) to (e) are all pertaining to the claim of deduction under Section 80IC of the Act. The substantial questions of law (f) and (g) are pertaining to the claim for additional depreciation. So far as the claim for deduction under Section 80IC is concerned, we find the issue to be academic as rightly pointed out by the learned senior counsel for the respondent/assessee for which purpose we have perused the assessment order dated 25th January, 2018 passed under Section 143(3) of the Act and in the computation the assessing officer has assessed the total income of the assessee to the following manner :

"Business Income : Rs (3,62,06,244)

Add :

Inadmissible Balance Additional Depr Rs.60,66,115

[Para -4]

Foreign exchange loss [Para - 5] Rs.1,65,65,143 : Rs.2,26,31,258

Total : Rs. (1,35,74,986)

Less :

Deduction u/s 80IC [Para 3] Rs.2,95,97,700 : Rs_____Nil

Total Income : Rs. (1,35,74,986)

Tax on above @30% [A] : Rs_____NIL

Book Profit : Rs.34,61,65,231

Tax on above @18.5% [B] : Rs.6,40,40,567"

As could be seen from the above computation of total income, the deduction under Section 80IC is nil. Therefore, the issue is purely academic and, accordingly, the substantial questions of law (a) to (e) are left open as it does not arise for consideration in the case on hand. So far as the substantial questions of law (f) and (g) are concerned with regard to the additional depreciation, it is not in dispute that the said issues squarely covered by the decision of the ***Principal Commissioner of Income Tax, Central - 1, Kolkata Vs. Ramkrishna Forging Ltd.***, reported in **2022(7) TMI 1312 (Cal)**. In the said decision the Court took into consideration the decision in the case of Dy. CIT vs. Brakes India Ltd. [I.T. Appeal No.1069 (Mds) of 2010 dated 6th January, 2012 which was followed in the case of **Commissioner of Income Tax, Chennai Vs. Aztec Auto (P) Ltd.**, reported in **[2020] 119 taxmann.com 215 (Madras)**.

In the light of the above, the substantial questions of law (f) and (g) are answered against the revenue. The appeal stands disposed of.

The connected application [GA/2/2023] stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

