O-109

ITA/78/2012

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
CENTRAL-III, KOLKATA

-Versus-

RAMPURIA INDUSTRIES &
INVESTMENT LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 20th February, 2023

Appearance :
Mr. Tilak Mitra, Adv.
…for the appellant.

Mr. Brijesh Kumar Singh, Adv.
...for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 16th September, 2011 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.1882/Kol/2009 for the assessment year 2006-07.

The appeal was admitted on 17th July, 2012 on the following substantial questions of law:

"(i) Whether on the facts and in the circumstances of the case, the learned Tribunal has erred in law in allowing the amount paid for getting the premises vacated from the tenant has been a business expenditure in any sense particularly when the West Bengal Premises Tenancy Act, 1956 has provided such kind of payment illegal and also under the provision of explanation of sub-Section (1) of Section 37 ?

(ii) Whether on the facts and in the circumstances of the case, the learned Tribunal has erred in law in dismissing the appeal of the revenue by relying on the decisions in case of CIT vs. Auto Distributors Ltd., reported in 210 ITR 222 (Cal) the facts of which are distinguishable from the facts of the instant case inasmuch as that assessee was not the owner of the property whereas in the instant case the assessee is the owner of the property and by getting vacated the same it got enduring benefit of free possession which is of capital nature ?"

We have heard Mr. Tilak Mitra, learned standing counsel for the appellant/revenue and Mr. Brijesh Kumar Singh, learned Advocate appearing for the respondent/assessee.

From the memorandum of grounds of appeal filed by the revenue, we find that the tax effect in the instant case is Rs.10,09,800/-. If that be the case, the revenue cannot pursue this appeal on the ground of low tax effect.

Accordingly, the appeal filed by the revenue (ITA/78/2012) 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.)

S.Das/As.