OD-5

ITA/110/2010

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

COMMISSIONER OF INCOME TAX,
KOLKATA-IV

-Versus-

M/S. THE DIAMOND CO. LTD.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 1st December, 2023

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

Ms. D. Mukherji, Adv.
...for the respondent.

The Court : Heard learned counsel for the appellant and learned counsel for the respondent.

Both the learned counsel for the parties jointly point out that the Income Tax Department had filed appeal before the Income Tax Appellate Tribunal, 'B' Bench, Kolkata confining the appeal to the following ground:

> *"On the facts and in the circumstances of the case, Ld. CIT(A) erred in treating the business income of Rs.2,53,03,344/- as capital gain violating the decision of Hon'ble Supreme Court in the case of G. Venkataswami Naidu & Co. –vs.- CIT [35 ITR 594 (SC)]".*

In view of the aforesaid facts, learned counsel for the parties pointed out that the tax effect would be less than the limit prescribed vide Circular No.17/2019 dated 8th August, 2019 fixing the limit for filing of appeal by the Department. From the perusal of the report we also find that paper book has not yet been filed by the appellant despite a clear direction given by this Court by order dated 23rd December, 2015.

In view of the aforesaid, the appeal (ITA/110/2010) is dismissed being below the monetary limit fixed under the aforesaid circular.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

As.