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ITAT/290/2017
IA No.GA/2/2017 (Old No.GA/2678/2017)

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

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-3, KOLKATA

-Versus-

M/S. BRITANNIA INDUSTRIES LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st February, 2023

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

Mr. R. K. Murarka, Sr. Adv.
Ms. Sutapa Roychowdhury, Adv.
Ms. Aratrika Roy, 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 4th November, 2016 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.907/Kol/2016 for the assessment year 2010-11.

The revenue has raised the following substantial questions of law for consideration:

(i) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law in holding that the Learned Commissioner of Income Tax cannot travel beyond the show cause notice to the Assessee by passing revision order under Section 263 of the Act, wrongly observing that proper opportunity of being heard to the Assessee was not given by the Learned Commissioner of Income Tax, relying upon the decision of the Hon'ble Supreme Court of India in the case of CIT Vs. Amitav Bhachchan reported in 384 ITR 200-Sc, which is not applicable to the present case as the facts and circumstances of the present case are distinct and different from the decision relied upon by the Learned Income Tax Appellate Tribunal ?*

(ii) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law in quashing the order of the Learned Commissioner of Income Tax-3, Kolkata passed under Section 263 of the Act, on the ground that the jurisdiction under Section 263 of the Act, was wrongly invoked on a mere change of opinion with regard to the assessment completed by the Assessing Officer?*

(iii) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law that mere submission of* *documents at the time of assessment proceedings does not entail the assessment free from error whereas it was well within the authority and jurisdiction of the Principal Commissioner of Income Tax to invoke the provision of Section 263 of the Act?*

(iv) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law that the issue of loss in foreign exchange as speculative loss even though such loss was not considerably substantiated by the Assessee to bear any direct relation with its business activity?*

(v) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law that the disallowance under Section 14A of the Income Tax Act, 1961 restricting the same to the extent offered by the Assessee in its return even though where the Assessing Officer, calculated such disallowance under Section 14A of the Income Tax Act, 1961 upon applying Rule, 8D of the Income Tax Act, as the Assessing Officer was not satisfied with the claim made by the Assessee?*

(vi) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law in not considering the allow ability deduction claimed by the Assessee under Section 80IC when the Assessee did not fulfil the conditions for claiming such deductions?*

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. R. K. Murarka, learned senior counsel assisted by Ms. Sutapa Roychowdhury and Ms. Aratrika Roy, learned Advocates for the respondent/assessee.

In the instant case, three issues have been raised. Firstly, as to whether the assumption of jurisdiction under Section 263 of the Act by the Commissioner of Income Tax was justified. The second aspect is with regard to disallowance under Section 14A of the Act and as to whether the manner in which the disallowance was made by accepting the plea of the assessee by the assessing office was justified and was it revisable by the Commissioner under Section 263 of the Act. The third issue is with regard to the deduction under Section 80IC.

We have elaborately heard the learned Advocates for the parties and carefully perused the materials placed on record.

On the first issue, the learned Tribunal has taken note of the factual position and in paragraph 4.4 of the impugned order, the tribunal has taken note of the balance-sheet of the assessee and was convinced that the assessee had not availed any ECB as stated by the audit party which was followed by the CIT in its order passed under Section 263 of the Act. Therefore, the learned Tribunal held that the CIT had assumed jurisdiction based on incorrect assumption of facts. Furthermore, the Tribunal noted that CIT has not taken any support to appreciate the reply filed by the assessee and the contention of the assessee together with supporting evidence which were part of the records and enclosed in the paper book. Therefore, on facts, the Tribunal was satisfied that the assumption of jurisdiction under Section 263 of the Act was erroneous. On examining the reasons given by the Tribunal, we find that there was no error in the order passed by the Tribunal which has been rendered after appreciating the factual position which was available on record.

Next aspect is with regard to the disallowance under Section 14A of the Act. The Tribunal rightly noted that the assessing officer accepted the calculation of disallowance under Section 14A of the Act as made by the assessee not only for the assessment year under consideration but from the assessment years 2004-05 onwards. Furthermore, the Tribunal also pointed out that when similar exercise was done by the Commissioner by invoking Section 263 of the Act for the assessment year 2008-09, the Tribunal had set aside the said order in ITA/390/Kol/2013 dated 2.3.2016. Thus, we find the conclusion arrived at by the Tribunal on this ground cannot be faulted.

The third issue is with regard to the allegation of excess deduction under Section 80IC of the Act. On perusal of the impugned order, more particularly from paragraph 6.3 of the order, we find that this issue has been considered not only for the assessment year under consideration but from the assessment year 2006-07 and consistently the stand taken by the assessee has been accepted. Thus, in absence of any distinct factors, the revenue cannot be permitted to take a contrary stand in the assessment year under consideration alone. Thus, the conclusion arrived at by the Tribunal cannot be faulted.

For the above reasons, we find no ground to interfere with the order passed by the learned Tribunal. Accordingly, the appeal (ITAT/290/2017) is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/2017) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das