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ITA/184/2018
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX -4, KOLKATA

-Versus-

M/S. TANTIA CONSTRUCTION LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 27th February, 2023

Appearance :
Mr. Om Narayan Rai, Adv.
…for the appellant.

Mr. Avra Majumdar, 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 22nd November, 2017 passed by the Income Tax Appellate Tribunal, "D" Bench, Kolkata (the Tribunal) in ITA No.1405/Kol/2015 for the assessment year 2012-13.

The appeal was admitted on 11th December, 2018 on the following substantial questions of law:

"(a) Whether the facts of this case are identical to those in Commissioner of Income Tax Vs. Simplex Concrete Piles (India) Pvt. Ltd. reported in [1989]

179 ITR 8 decided on 5th December, 1988 and this Court should follow the same in this case also?

(b) Whether on the facts and circumstances of the case, the retention amount could be taken to be the income of the assessee in the subject previous year?

(c) Did the tribunal come to the correct legal conclusion by following the correct accounting principles?"

We have heard Mr. Om Narayan Rai, learned standing counsel appearing for the appellant/revenue and Mr. Avra Majumdar, learned advocate appearing for the respondent/assessee.

The learned advocate appearing for the respondent/assessee submitted that the application filed by the financial creditor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) before the NCLT, Kolkata was admitted for initiating corporate resolution process in respect of the assessee company and the NCLT by an order dated 13th March, 2019 declared moratorium for the purposes of referring to in section 14 of the IBC. Further, the NCTL has approved the resolution plan submitted by the company on 24th February, 2020. Since the resolution plan has already been approved, the instant appeal has become infructuous and, accordingly, stands dismissed without any order as to costs. Further, in the assessee's own case in ITA/20/2021, ITA/21/2021 and ITA/115/2018 the appeal was dismissed on similar grounds.

For the above reasons, the appeal [ITA/184/2018] filed by the revenue is dismissed and the substantial questions of law are left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/K. Banerjee