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

ITA/177/2009
COMMISSIONER OF INCOME TAX, KOLKATA-III, KOLKATA
VS.
ITC BHADRACHALAM PAPER BOARDS LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th February, 2023

<u>Appearance</u> :
*Mr. Prithu Dudhoria, Adv.*
*... for appellant*

*Mr. J.P. Khaitan, Sr. Adv.*
*Ms. Nilanjana Banerjee Pal, Adv.*
*... for respondent*

The Court : This appeal by the revenue filed under Section 260A of the Income Tax, 1961 (the Act) is directed against the order dated 18th February, 2005, passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (Tribunal) in ITA No. 177(Hyd.)/1998 for the assessment year 1993-94.

The appeal was admitted on 20th September, 2010 on the following substantial questions of law :-

"Whether on the facts and in the circumstances of the case Tribunal was justified in holding that the amount of Rs. 3,65,66,602/- received by the assessee on account of Sales Tax subsidy as capital receipt and not revenue receipt and not taxable in the year of receipt on the basis of subsequent order or refund passed after more than eight years without considering and disregarding that during the intervening period the said amount has remained with the assessee and it has utilized the same during the intervening period ?"

We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel appearing with Ms. Nilanjana Banerjee Pal, learned advocate for the respondent/assessee.

On account of certain subsequent developments we are not required to decide the correctness of the order passed by the learned Tribunal, but simultaneously we are required to clarify certain facts for better clarity. The issue was whether the amount of subsidy of Rs.3,65,66,602/- received by the assessee from the State government as Sales Tax subsidy was a revenue receipt or a capital receipt. The Assessing Officer by order dated 29th March, 1996 held the same to be revenue receipt. This order was affirmed by the Commissioner of Income Tax (Appeals), Kolkata on 19th December, 1997.

The learned Tribunal on an appeal filed by the assessee had reversed the decision of the CIT(A). Aggrieved by such order, the revenue has filed this appeal before this Court.

It appears that pursuant to an order passed by the Hon'ble High Court of Andhra Pradesh, it was held that the respondent/assessee was not entitled to the subsidy. This order was affirmed by the Hon'ble Supreme Court which necessitated the respondent/assessee to refund the amount of subsidy received by them, namely, Rs.3,65,66,602/-. Upon such refund, the assessee claimed deduction for the assessment year 2002-03 which was rejected by the assessing officer, affirmed by the CIT(A) and in an appeal filed before the learned Tribunal in ITA No.2113/Kol/2005, it was held that the assessee was entitled for the deduction. The order of the Tribunal is dated 5th October, 2006 which has attained finality. In the light of the this factual development, assuming the appeal filed by the revenue is allowed, it would amount to inconsistent orders as the order passed by the CIT(A) would stand revived and the resultant position would be, it would be inconsistent with the relief of deduction granted to the assessee for the assessment year 2002-03. Therefore, we are inclined to issue the following direction so as to being a finality to the matter.

Taking note of the above factual situation, this appeal stands disposed of clarifying that the order passed by the learned Tribunal impugned in this appeal, need not be tested for its correctness on account of the order passed by the Tribunal in ITA No.2113/Kol/2005 dated 5th October, 2006 for the assessment year 2002-03 as the said order, in effect, would render this appeal incapable of being pursued as the order has worked itself out.

Furthermore, the learned senior Advocate appearing for the respondent/assessee has submitted that pursuant to the orders passed by the CIT(A) dated 19th December, 1997, the assessee had paid tax which has now been allowed as a deduction in the assessment year 2002-03 pursuant to the order of the Tribunal dated 5th October, 2006. That apart, 'no giving effect to the order' was passed by the Department pursuant to the impugned order in this appeal dated 18th February, 2005.

We further clarify the position that the order impugned in this appeal passed by the Tribunal need not be given effect to and on account of the deduction granted in the year 2002-03, necessarily, the order passed by the CIT(A) dated 19th December, 1997 stands restored.

With the above observation, this appeal (ITA/177/2009) stands disposed of. Consequently, the substantial question of law is left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/S.Pal/S.Kumar/A.S.