OD–5

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

ITA/76/2013
COMMISSIONER OF INCOME TAX, KOL - IV
VS.
RIGHT FLORIST PVT. LTD.

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

<u>Appearance</u> :
Mr. Soumen Bhattacharjee, Adv.
...for appellant

The Court : - This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 12.04.2013 passed by the Learned Income Tax Appellate Tribunal "B" Bench, Kolkata in I.T.A. No. 1336/Kol/2011 relating to the Assessment Year 2005-2006.

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

i) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in deleting the addition made by the assessing officer under Section 40(a)(ia) of Income Tax Act, 1961, an amount of Rs.30,44,166/- relating to the payment made by the assessee on account of online advertisement, to M/s Google Ltd. and M/s. Overture Services without deducting TDS, by holding that the assessee was under no obligation to deduct TDS under Section 195 of the I.T. Act, 1961?

ii) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in deleting the addition of Rs.30,44,166/- made by the assessing officer on account of non deduction of TDS on payment of online advertisement, to M/s Google Ltd. and M/s Overture Services, by holding that according to the provisions of Double Taxation Avoidance Act (DTAA), no portion of payments made to the non residence companies is taxable in India since it has no Permanent Establishment (PE) ?

iii) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law in deleting the addition of Rs.30,44,166/- made by the assessing officer, by disregarding that it is immaterial as to whether non-resident to whom payments are made have any permanent establishment in India or not ?

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel for the appellant.

As could be seen from the order passed by the Commissioner of Income Tax, Appeals XII, Calcutta dated 15.7.2011 the tax effect involved in this appeal is Rs.16,37,016/- which is less than the threshold limit of Rs. 1 crore . Therefore, the revenue cannot pursue this appeal.

Accordingly, the appeal stands disposed of on the ground of low tax effect.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.