OD-6

ITA/122/2012

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

M/S. INDIAN BANK

-Versus-

COMMISSIONER OF INCOME TAX-II,
KOLKATA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 20th March, 2023

Appearance :
Mr. C. Bhaskaran, Adv.
Ms. Swapna Das, Adv.
...for the appellant.

Mr. Smarajit Roychowdhury, Adv.
...for the respondent.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated May 16, 2012 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.1349/Kol/2009 for the assessment year 2001-02.

The appeal was admitted on 27th September, 2012 on the following substantial question of law :

> *"Whether on a true and proper interpretation of section 36(1)(viia)(a) of the Income Tax Act, 1961 including the first proviso thereto, the*

Tribunal was justified in law in holding that deduction under the first proviso was alternate to that under sub-clause(a) and that no deduction under the first proviso was allowable if deduction had been allowed under sub-clause (a), thereby rejecting the appellant's claim for deduction of Rs.63,45,02,440/- under the first proviso ?"

We have heard Mr. C. Bhaskaran, learned counsel assisted by Ms. Swapna Das, learned advocate for the appellant/assessee and Mr. Smarajit Roychowdhury, learned standing counsel for the respondent/revenue.

The substantial question of law which has been framed for consideration arose in the assessee's own case for the assessment year 2003-04 in ITA No.70/2011 wherein it was substantial question of law no.1. The said question was answered in favour of the assessee by judgment dated 20th March, 2023 in ITA No.70/2011.

Thus, following the said decision, this appeal (ITA/122/2012) is allowed and the substantial question of law is answered in favour of the assessee.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As./S.Pal