

OD-7

ITA/213/2009

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

COMMISSIONER OF INCOME TAX,
KOLKATA-II

-Versus-

STARPAPER MILLS LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 9th February, 2023

Appearance :
Mr. Aryak Dutt, Adv.
...for the appellant.

Mr. Pratyush Jhunjhunwala, Adv.
Mr. A. K. Dey, 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 30th January, 2009 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.1007/Kol/2008 and ITA No.1987/Kol/2008 for the assessment years 2004-05 and 2003-04 respectively.

The appeal was admitted on the following substantial questions of law:

- (i) *Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law to hold that provision for pension, provision for leave encashment and provision*

for wealth tax are ascertained liability when the assessee failed to substantiate the same as ascertained liability ?

(ii) Whether the Tribunal committed a manifest error of law in overlooking that 245 ITR 428 had nothing to do with computation of book profit under clause (c) to the explanation of Section 115JB which was not in the statute at the time of pronouncement of the said decision ?

We have heard Mr. Aryak Dutt, learned standing counsel for the appellant/revenue and Mr. Prathyush Jhunhunwala, learned counsel assisted by Mr. A.K. Dey, learned Advocate for the respondent/assessee.

As could be seen from the computation of tax as furnished by the respondent/assessee, the tax effect is Rs.60,50,669/- which is well below the threshold limit of Rs.1 crore. Therefore, the revenue cannot pursue this appeal before this Court.

Accordingly, the appeal filed by the revenue (ITA/213/2009) stands disposed of and the substantial questions of law are left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)