OD-1

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

ITAT/217/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS
M/S GARDEN REACH SHIPBUILDERS & ENGINEERS LIMITED
KOLKATA

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM
AND
The HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 16TH OCTOBER, 2023.

Appearance:
Ms. Smita Das De, Adv.
..for appellant
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
Mr. Debashis Mitra, Adv.
....for respondent

The Court :- We have heard Ms. Smita Das De, learned Advocate appearing for the appellant and Ms. Swapna Das, Mr. Siddhartha Das, learned Advocates appearing for the respondent.

There is a delay of 565 days in filing the appeal. We are satisfied with the explanation offered and accordingly the delay in filing the appeal is condoned. The application for condonation of delay is allowed.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 07.09.2021 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata in ITAT No. 50/Kol/2020 for the assessment year 2012-13. The respondent has raised the following substantial question of law :-

"Whether on the facts and circumstances of the case and in law, the Tribunal was justified in law to delete the addition on account of employees contribution towards Provident Fund amounting to Rs.3,30,13,514/- and ESI amounting to Rs.12,99,775/- after due date without considering the decisions of the Hon'ble Madras High Court in the case of Unifac Management Service (India) Private Limited vs. DCIT (2018) 409 ITR 225, decision of the Hon'ble Kerala High Court in the case of M/s. Merchem Limited reported in 378 ITR 443 and the decision of the Hon'ble Bombay High Court in case of M/s. Ghatge Patil Transport Limited reported in 368 ITR 749 and also violating the provisions of Section 2(24)(x) read with Section 36(1)(va) of the Income Tax Act, 1961 ?"

The substantial question of law which has been raised is squarely covered in favour of the appellant/department in the light of the decision of the Hon'ble Supreme Court in the matter of *Checkmate Services Private Limited Vs. Commissioner of Income Tax-1* reported in (2023) 6 Supreme Court Cases 451.

Thus following the decision of the Hon'ble Supreme Court the appeal is allowed and the order passed by the Tribunal is set aside and the substantial question of law is answered in favour of the appellate department.

Consequently, the connected applications stand closed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

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