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

ITA/205/2022
IA NO: GA/1/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS.
M/s. KESORAM INDUSTRIES LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8TH FEBRUARY, 2023

Appearance :
Mr. Smarajit Roy Chowdhury, Adv.
...for appellant
Mr. J. P. Khaitan, Sr. Adv.,
Ms. Nilanjana Banerjee Paul, Adv.
...for respondent

The Court : - Heard learned Counsel for either side.

This appeal filed by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 16th March, 2022 passed by the Income Tax Appellate Tribunal 'B' Bench Kolkata in ITA No.508/Kol/2020 for the assessment Year 2010-2011.

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

i) As to whether the Learned Tribunal has committed substantial error in law my accepting the appellant's claim in respect of market value in which the rate of sale of electricity of State Electricity Board to its consumers has been considered ?

ii) As to whether the Learned Tribunal has committee substantial error in law my allowing the claim of the assessee under section 80IA[8] of the Income Tax Act, 1961 amounting to Rs.49,62,86,623/- in terms of section 80A[6] of the Income Tax Act, 1961 ?

The revenue has aggrieved by the order passed by the Commissioner of Income Tax [Appeals] [CIT(A)] in allowing the claim made by the assessee under section 80IA[8] of the Act by holding that the rate for the electricity transaction from the power plants to the cement manufacturing unit has to be determined with reference to the rates charges charged by the concerned State Electricity Board as against the rate at which electricity is sold to the State Electricity Board in accordance with the provisions of Section 80A(6) of the Act.

We find from the order passed by the learned Tribunal that identical issue arose for consideration in the assessee's own case for assessment years 2008-09, 2009-10, 2014-15, 2015-16 and the learned Tribunal had granted relief in favour of the assessee and has affirmed the order passed by the CIT (Appeals) which had granted relief to the assessee. Before us there is nothing to indicate that the orders passed by the learned Tribunal for the assessment years 2008-09 and 2009-10 were challenged by way of an appeal before this Court.

` So far as the other three assessment years namely, 2013-14, 1014-15 and 2015-16, though this issue was raised in the appeals being ITAT 244 of 2022 for the assessment year 2013-14, ITAT 225 of 2022 for the assessment year 2014-15 and ITAT 67 of 2022 for the assessment year 2015-16, since it was found that no gross total income had arisen in the said assessment year, the issue was not decided. Nevertheless the appeal filed by the revenue was dismissed thereby the order passed by the Tribunal for those three assessment years were upheld.

Thus, in the absence of any distinguishing factors brought on record by the revenue before the Tribunal or before this Court, we find that the learned Tribunal rightly dismissed the revenue's appeal by taking note of the decision in the assessee's own case for the earlier assessment years.

In the result, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the application for stay being IA No.GA/1/2022 is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH/SN/spal