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

ITAT/206/2022
IA NO: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA
VS.
M/s. WEST BENGAL INDUSTRIAL INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED

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

Appearance :
Mr. Tilak Mitra, Adv.
…for appellant.

The Court : - Heard learned Counsel appearing on behalf of the appellant Mr. Tilak Mitra, learned Advocate.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 is directed against the order dated 22.01.2021 passed by the Learned Income Tax Appellate Tribunal "A" Bench, Kolkata on I.T.A. No.2550/Kol/2019 for the assessment year 2010-2011.

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

a. Whether, on the facts and circumstances of the case and in law learned ITAT was erred in upholding the order of the CIT(Appeal), wherein the CIT(Appeal) gave direction to the assessing officer to allow the deduction under section 80IA of the Income Tax Act, 1961 as per unit-wise profit/loss and arrived at the total income as loss and accordingly the deduction under section 80IA of the Income Tax Act, 1961 was denied to the assessee ?

b. Whether on the facts and circumstances of the case and in law the learned ITAT has erred in relying on the decision of the Learned ITAT in the assessee's own case for the assessment year 2011-12 while in the said order the impugned issue had not been substantively decided by the Learned ITAT ?

As could be seen from the order passed by the learned Tribunal the Tribunal had followed the decision in the assessee's own case for the assessment year 2011-12 in ITA No. 298/Kol/2016 dated 26.4.2018. The said order appears to have attend finality as in the Memorandum of Appeal the revenue has not stated that the said order has been put to challenge. That apart the learned Tribunal had taken note of the order passed by the Commissioner of Income Tax (Appeals) – 2, Kolkata (CITA) while allowing the assessee's appeal took note of the fact that deduction claimed by the assessee under Section 80IA has consistently been accepted and allowed by the department commencing from the assessment year 2003-04 to 2009-2010 as well as for the assessment year 2012-13. That apart, the CITA also found that the assessing officer has made detailed discussion as regards the assessee's claim under Sec. 80IA and only after considering all aspects he has allowed this deduction. Thus it is clear that consistently the department has been allowing such deduction and only for two assessment years the same were denied of which for the assessment year 2011-12 the Tribunal had dismissed the revenue's appeal and the solitary year is the year under consideration which is 2010-2011. Thus the department is required to adopt a consistent approach in the matter unless and until there are distinguishing features, the learned Tribunal rightly dismissed the revenue's appeal and affirmed the order passed by the CITA. Thus we find no grounds exist to interfere with the order passed by the learned Tribunal.

Accordingly, the appeal is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the application being GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.