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

ITAT/258/2022
IA NO: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 1 KOLKATA
VS.
M/s. RAMKRISHNA FORGINGS LTD.

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

Appearance :
Mr. Tilak Mitra, Adv.
…for appellant
Mr. S.M. Surana, Adv.
Ms. Sapna Das, Adv.
Mr. S. Das, 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 13th March, 2020 passed by the Income Tax Appellate Tribunal 'A' Bench Kolkata in ITA No.113/Kol/2017, CO No. 16/Kol/2017, A/o ITA 113/Kol/2017 relating to Assessment Year 2009-2010.

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

i) WHETHER the Learned Tribunal has erred in law in deleting the disallowance of 50% of additional depreciation as 50% of additional depreciation was claimed in preceding assessment year on new plant and machinery which was put to use for less than 180 days, ignoring the reasoned order of the A.O. and relying on the assessee's submission ?

ii) WHETHER the Learned Tribunal has erred in law in holding that forex loss is allowance as expenditure under section 37 of the Act, overlooking the contractual nature of forex transactions as enumerated in provision of section 43(5) of the Income Tax Act, 1961 ?

iii) Whether the Ld. Tribunal has erred in law in deleting the addition made u/s.36(i)(va) r.w.s. 2(24)(x) of the Act as the payment of Employee's Contribution is not covered u/s 43B of the Act ?

So far as the first substantial question of law is concerned identical issue was decided in the assessee's own case for the assessment year 2010-2011 in ITAT No. 49 of 2020 dated 27.7.2020. Following the said decision the substantial question of law no. 1 is answered against the revenue. So far as the second substantial question of law is concerned we note that the learned Tribunal had rightly took note of the decision of the Hon'ble Supreme Court in *CIT Vs. Woodward Governor India Pvt. Ltd.,* [312 ITR 254 (SC)] and granted relief to the assessee. The said order cannot be faulted and accordingly substantial question of law No. 2 is answered against the revenue. So far as the third substantial question of law is concerned the said issue has to be answered in favour of the revenue and against the assessee in the light of the decision of the Hon'ble Supreme Court in *CIT Vs. Checkmate Services P. Ltd.*; [448 ITR 518 (SC)]. Thus following the above decision the substantial question of law no. 3 is answered in favour of the revenue. In the result the appeal is partly allowed. The substantial questions of law No. 1 and 2 are answered against the revenue and substantial question of law No. 3 is answered in favour of the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.