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

ITA/362/2009
COMMISSIONER OF INCOME TAX, KOLKATA – IV
Vs.
M/s. SELVEL MEDIA SERVICES PVT. LTD.

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 9th February 2023.

Appearance:
Mr. Soumen Bhattacharjee, Adv.
…for the appellant.
Mr. J.P. Khaitan, Sr. Adv.
…for respondent

The Court : We have heard Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant and Mr. J.P. Khaitan, learned senior counsel for the respondent.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 31.7.2009 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in ITA No. 1065/Kol/2008 for the assessment year 2005-06.

The appeal was admitted on 14.01.2010 on the following substantial questions of law for consideration :-

A) Whether on the facts and circumstances of the case the learned Tribunal was justified in law in upholding the contention of the assessee that the deduction of the expenditure for development of toilet blocks, bus shelters and foot over bridges are infrastructural facility as per explanation to Section 80 IA(4) of the Income-tax Act, 1961 ?

B) Whether on the facts and circumstances of the case, the Income-tax Appellate Tribunal was justified in allowing expenditure for the period prior to Assessment year 2004-05?

The first substantial question of law has to be decided against the revenue in the light of the decision of this Court in the case of assessee's sister concern in *Principal Commissioner of Income Tax, Kolkata 4, Kolkata Vs. Vantage Advertising Pvt. Ltd. in ITA No. 41 of 2017*. In the said decision, the said question was answered against the revenue in the following terms :

"The Commissioner of Income Tax [Appeals] and the Tribunal considered the fact and have returned the finding on merits. The Revenue's contention is that the assessee is only an advertising firm putting banner for their own purpose and, therefore, the question of claiming of any deduction under section 80IA of the Act would not arise. This appears to be factually incorrect as is seen from the order passed by the CIT [A] as well as the Tribunal where the Tribunal has clearly held that the assessee is engaged in infrastructure development which involves construction of foot over bridge as well as the bus shelter and, therefore, the assessee is entitled to deduction under section 80IA of the Act. The Tribunal followed the decision of this Court in the case of Commissioner of Income Tax, Kolkata-IV, Kolkata vs. Selvel Advertising Pvt. Ltd., ITA 49 of 2010 dated 22.4.2010 which was also a similar matter wherein an advertising company engaged in infrastructure development has erected automatic traffic signal and pedestrian foot over bridge and the question was whether this would constitute infrastructure development as contemplated in clause [a] of the Explanation to subsection [4] of section 80IA of the Act. The Division Bench by the said judgement had upheld the decision rendered by the Tribunal and dismissed the Revenue's

appeal. This decision has attained finality. Therefore, we are of the view that the decision of the Tribunal in so far as the claim of deduction made by the assessee under section 80IA of the Act requires to be sustained. Accordingly, substantial questions of law nos.1 to 4 are answered against the Revenue."

Following the above, the first substantial question of law is answered against the revenue.

With regard to the second substantial question of law, the issue is once again covered by the decision of this Court in Sutna Stone and Lime Co. Ltd. vs. Commissioner of Income Tax, 1991 (192) ITR 478 (Cal.). In fact, the decision in Sutna Stone and Lime Co. Ltd. had been relied on and followed by the learned Tribunal and the Tribunal has also pointed out that in the assessee's own case for the assessment year 2004-05 in ITA No. 1040/Kol/2008, this issue was decided in favour of the assessee.

In the light of the above, the substantial question of law no.2 is also answered against the revenue.

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

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

GH/RBhar/SN/Spal