OD-9

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/1/2024
IA NO: GA/1/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 9 KOLKATA
VS
SUGAM PARK

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th January, 2024.

<u>Appearance</u> :
*Mr. Tilak Mitra, Adv.*
*Mr. Soumen Bhattacharjee, Adv.*
*…for appellant.*
*Mr. Arvind Agarwal, Adv.*
*Mr. F. Ghaffar, Adv.*
*…for respondent.*

The Court :- This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 19.07.2023 passed by the Income Tax Appellate Tribunal B Bench, Kolkata in ITA No. 390/Kol/203 for the assessment year 2018-19.

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

*i) Whether the Ld. Tribunal was committed substantial error in law in not considering that penalty imposed by Asansol Durgapur Development Authority (ADDA) has arisen out of penal clauses as embedded in the Rules and Regulations of ADDA, which is a Statutory Body, created in 1980 under*

*Section 11 of West Bengal Town & Country Planning (Planning & Development) Act, 1979 ?*

*ii) Whether the Ld. Tribunal has committed substantial error in law in not considering that the phrase 'prohibited by law' as mentioned in Explanation 1 to section 37(1) of the Income-tax Act has a wider meaning and Asansol Durgapur Development Authority (ADDA), being a Statutory Body, is empowered to enforce it's Laws and Bye laws on the clients and penalty arising out of violation of such laws by assessee was not an allowable expenditure ?*

We have heard learned Counsel on either side.

The short issue which falls for consideration is whether the deduction claimed by the assessee with regard to the payment which was made in terms of the agreement entered into between the assessee and Asansol Durgapur Development Authority for construction of residential township can be disallowed, as it is in the nature of penalty. The learned Tribunal after examining the relevant clauses of the agreement more particularly sub-clause No. 9 held that the amount paid by the assessee towards non fulfillment of contract and though the expression 'penalty' had been used in sub clause 9 of the agreement it was found that the payment is not on account of infringement of any provision of law rather it is on account of non fulfillment of contractual obligation. This issue was considered by the Hon'ble Supreme Court in the case of *Prakash Cotton Mills Pvt. Ltd. Vs. Commissioner of Income Tax, 201 ITR 684 (SC)* and in case of *Commissioner of Income Tax Vs. Ahmedeabad Cotton Manufacturing Co. Ltd. [1994], 205 ITR 163 (SC)*. The said decisions have been followed by the High Court of Punjab and Haryana in the case of *Commissioner* *of Income Tax Vs. Indo Asian Switch Gears Pvt. Ltd. ; [1997] 92 taxmann.086 (P&H)*. The said decision has been affirmed by the Hon'ble Supreme Court.

In the light of the same, the order passed by the Tribunal does not call for any interference. Accordingly, the appeal is dismissed and the substantial questions of law are answered against the revenue.

Thus, the applications are also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.