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

ITAT/7/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 1 KOLKATA
VS
M/S JAS TOLL ROAD COMPANY LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 26TH February, 2024.

Appearance :
Ms. Smita Das De, Adv.
…for appellant

The Court :- This appeal filed by the revenue under section 260A of the Income Tax Act, 1961 [the Act] is directed against the order dated 24.3.2023 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA/345/Kol/2022 for the assessment year 2012-2013.

The revenue ha raised the following substantial questions of law for consideration.

"A. Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law, to dismiss the appeal of the revenue by relying on the judgment of the Hon'ble High Court in the case of Era Infrastructure India Ltd. [ITA/204/2022], wherein the Hon'ble High Court, was pleased to clarify that the order passed in said case, shall abide by the final decision of the Hon'ble Supreme Court, in the SLP filed, in the case of IL&FS Energy Development Co. Ltd. [399 ITR 483], which is still pending as on date ?

B. Whether on the facts and in the circumstances of the case the order of the Learned Income Tax Appellate Tribunal was justified in law by dismissing the appeal of revenue without qualifying the same as done by the Hon'ble Delhi

High Court in the decision of Era Infrastructure India Ltd. [ITA/204/2022], by not considering that the issue of necessity of earning of exempt income during the relevant assessment year for disallowance under section 14A of the Act has not yet attained any finality ?"

Heard learned counsel for the appellant.

The revenue has been served but none appears for the respondent.

Upon careful consideration and going through the materials on record we find that the learned tribunal was fully justified in dismissing the appeal filed by the revenue affirming the order passed by the Commissioner of Income Tax [Appeals], Kolkata-20. The issue involved in the case is that whether disallowance under section 14A of the Act can be made even if the assessee has not earned any exempt income, the issue is no longer res integra and there are several decisions to the effect that amendment made under section 14A of the Act by Finance Act, 2022 will be applicable prospectively and disallowance should not exceed the exempt income earned by the assessee during the year. The PCIT has also noted the decision of the Hon'ble Supreme Court in CIT vs. Chettinad Logistics Pvt. Ltd. [2018] 95 taxmann.com 250 and PCIT –18 vs. Oil Industries Development Board, SLP [Civil] Diary No.2755/2019.

Thus, we find no ground 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.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.