OD–52

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

ITAT/16/2024
IA No: GA/1/2024
THE PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
APEEJAY PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st May, 2024

Appearance :
Ms. Smita Das De, Adv.
Mr. Soumen Bhattacharjee
...for appellant
Mr. Abhratosh Majumder, Sr. Adv.
Mr. Avra Mazumder, Adv.
...for respondent

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 10th August, 2023 passed by the Income Tax Appellate Tribunal, `A' Bench, Kolkata in ITA No. 116/Kol/2023, for the assessment year 2013-14.

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

"Whether the Learned Income Tax Appellate Tribunal was justified in law to hold that the addition on account of deemed dividend under Section 2(22)(e) of Income Tax Act, 1961, could only be made in the hands of the registered/beneficial shareholders, ignoring the fact that the Section

2(22)(e) does not contain any such specific provision or restriction and nowhere provides as to who is to be taxed in respect of such income ?"

We have heard learned Counsel appearing for the parties.

Learned Counsel for the respondent/assessee had submitted that the question of law raised in this appeal is squarely covered in favour of the assessee in the light of the decisions of the Hon'ble Supreme Court in Commissioner of Income Tax vs. Madhur Housing & Development Co., (2018) 93 taxmann.com 502(SC) as well as the decisions in (2012) 340 ITR 14 (Delhi) and (2020) 120 taxmann.com 125 (Madras). Copies of the decisions were handed over to the appellant on the last hearing day. There is nothing brought on record by the revenue to point out any distinguishing feature for us not to follow the decisions of the Hon'ble Supreme Court and the decisions referred above.

Thus, following the decisions of the Hon'ble Supreme Court in (2018) 93 taxmann.com 502(SC), (2012) 340 ITR 14 (Delhi) and (2020) 120 taxmann.com 125 (Madras), (supra) the appeal is dismissed and the substantial question of law is answered against the revenue.

The stay application IA No: GA/1/2024 is also dismissed.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

SN
AR(CR)