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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITA/131/2018
PRINCIPAL COMMISSIONER OF INCOME TAX-
2, KOLKATA
VS
KESORAM INDUSTRIES LTD

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 22nd May, 2024

Appearance :
Sri Smarajit Roy Chowdhury, Adv.
..for the appellant.

Sri J.P. Khaitan, Sr. Adv.
Smt. Nilanjana Banerjee Pal, Adv.
...for the respondent.

1. Heard Sri Smarajit Roy Chowdhury, learned senior standing counsel for the appellant and Sri J.P. Khaitan, learned senior advocate assisted by Smt. Nilanjana Banerjee Pal, learned counsel for the respondent.
2. This appeal has been admitted by order dated 18.7.2018 on the following substantial questions of law :

"(I) Whether on the facts and in the circumstances of the case the Learned Tribunal erred in law in holding that the amounts aggregating to Rs.37,087/- written off by the assessee was a trading loss and not a

capital loss under Section 28 read with Section 36(1)(vii) of the Act?

(II) Whether on the facts and in the circumstances of the case the assessee could claim enhanced depreciation after the introduction of Explanation 5 to Section 32(1) of the Income Tax Act, 1961?"

3. Heard learned counsel for the parties and perused the paper books. Both the learned counsel for the parties jointly state that the ITAT has followed its earlier order passed in earlier assessment years on the same controversy inter parties. We find from paragraphs 8.1 to 8.3 of the impugned order of the ITAT that identical controversy was involved in assessment year 2003-04 for consideration before the ITAT inter parties and the question was decided by the ITAT in ITA No.308/Kol/2007 dated 23.11.2007 for assessment year 2003-04. The disallowance made was related by the CIT(A) for the assessment years 2006-07 and 2007-08 against which no further appeal was preferred by the revenue. In view of the findings recorded by the ITAT as briefly noted above, we do not find any good reason to interfere with the impugned order of the ITAT. Consequently, the substantial question of law (I) is answered in favour of the assessee and against the revenue.

4. So far as the substantial question of law (II) is concerned, we find that the ITAT has dealt the matter in paragraphs 9 to 9.3 of the impugned order following its decision inter parties relating to assessment years 2006-07 and 2007-08. The ITAT has followed its earlier decisions for the aforesaid two assessment years. It is informed at the bar that the revenue's appeal for the assessment year 2006-07 was dismissed by this Court on the point of limitation whereas the order of the ITAT relating to assessment year 2007-08 was not challenged by the revenue and, thus, it had attained finality.
5. In view of the facts briefly noted above, we do not find any good reason to interfere with the order of the ITAT. The substantial question of law (II) is answered in favour of the assessee and against the revenue.
6. For all the reasons afore-stated, the appeal is dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

