OD – 3

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

ORIGINAL SIDE

ITA/79/2018
PRINCIPAL COMMISSIONER OF INCOME TAX,
KOLKATA – 4, KOLKATA
VS
M/S. JCT LIMITED

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 14th May, 2024

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

*Sri Akhilesh Kumar Gupta, Adv.*
*Smt. Akshara Shukla, Adv.*
*Sri Aritra Nag, Adv.*
*...for the respondent.*

1. Heard Sri Smarajit Roy Chowdhury, learned senior standing counsel for the appellant and Sri Akhilesh Gupta, learned counsel for the respondent.
2. This appeal was admitted by order dated 13.6.2018 on the following substantial question of law :

   *"Whether the Learned Tribunal erred in law in allowing deduction of interest on borrowed capital without first satisfying itself that the borrowed capital had been utilized for the purpose of business in accordance with Section 36(1)(iii) and Section 37(1) of the Income Tax Act, 1961?"*

3. This appeal relates to assessment years 1998-99, 2001-02, 2002-03 and 2003-04. The impugned order dated 4.12.2015 is a common order passed by the Income Tax Appellate Tribunal, “B” Bench, Kolkata in two appeals filed by the revenue involving the afore-noted four assessment years. Common question of fact and law are involved.
4. In the impugned order the ITAT has followed its earlier order passed in Income Tax Appeal No.1135/Kol/2003 for the assessment year 1994-95 which has been affirmed by this Court by judgment and order dated 19.12.2023 in ITA/19/2013 (Commissioner of Income Tax, Kolkata – IV Vs. JCT Limited). In the impugned order the ITAT has also recorded finding of fact. The assessing officer has not disputed the availability of the surplus fund of the assessee.
5. Both the learned counsel for the parties jointly agree that the controversy involved in the present appeal for the aforesaid assessment years is squarely covered by judgment and order dated 19.12.2023 in ITA/19/2013 (Commissioner of Income Tax, Kolkata – IV Vs. JCT Limited) passed by this Court and in view thereof, both the substantial question of law deserves to be answered

against the revenue and in favour of the assessee and the appeal deserves to be dismissed.

6. In view of the aforesaid, the appeal is dismissed. The substantial question of law is answered in favour of the assessee and against the revenue.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

Sd/