OD-8

ITA/40/2022

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

PRINCIPAL COMMISSIONER OF INCOME TAX 3, KOLKATA

VERSUS

M/s. DAMODAR VALLEY CORPORATION

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 13th May, 2024.

Appearance:
*Ms. Smita Das De, Adv.*
*... for the appellant.*

*Mr. Rahul Tangri, Adv.*
*Mr. Shovit Betal, Adv.*
*...for the respondent.*

1. Heard Smt. Smita Das De, learned senior standing counsel for the appellant and Sri Rahut Tangri, learned counsel for the respondent/assessee.

2. This appeal was admitted by this Court by order dated 10.05.2022 on the following substantial questions of law:

   *i) Whether the Hon'ble ITAT, Kolkata is justified in facts and in law to allow the appeal where the appeal on the same issue is pending before the Hon'ble High Court Calcutta against the assessee's own case ?*

ii) *Whether the Hon'ble ITAT, Kolkata is justified in facts and in law to allow the appeal against the revision assessment order of the Assessing Officer dated 22.12.2017 on the mere ground that the Hon'ble ITAT vide its order dated 21.02.2018 had quashed the revision order of Pr. CIT-3, Kolkata passed on 12.01.2017 and not verifying the facts and circumstances of the case ?*

iii) *Whether the Hon'ble ITAT, Kolkata is justified in facts and in law to declare the impugned revision assessment order of the Assessing Officer dated 22.12.2017 as nonest without considering the facts of the case based on its merit ?*

iv) *Whether the Hon'ble ITAT, Kolkata is justified in facts and in law to declare the impugned revision assessing orders of the Assessing Officer dated 22.12.2017 as nonest and deleted the disallowance by Assessing Officer on account of prior period expenditure of Rs.39,34,86,241/- without considering the fact that the said disallowance was made by the Assessing Officer based on the fact the dues payable to BCCL for earlier years (prior to FY 2011-12) ?*

3. Today, learned senior standing counsel for the appellant has stated that the main Income Tax Appeal No.5 of 2021 (Principal Commissioner of Income Tax-III, Kolkata vs. Damodar Valley Corporation) arising from the order of the ITAT dated 21.02.2018 in ITA No.401/Kol/2017 for the assessment year 2012-13, has been dismissed by this Court by order dated 27.09.2022. She, therefore, states that on account of dismissal of the aforesaid department's Income Tax Appeal No.15 of 20212 by

judgment and order dated 27.09.2022 passed by this Court, the present appeal (ITA/40/2022) has become infructuous.

4. In view of the aforesaid, this appeal (ITA/40/2022) is dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

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