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

IA NO. GA/3/2024
In ITA/24/2020
COMMISSIONER OF INCOME TAX (TDS), KOLKATA
Vs
NIRMAL KUMAR KEJRIWAL

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : September 13, 2024.

Appearance :
Mr. Soumen Bhattacharjee, Adv.
Ms. Doyel Dey, Adv.
…for appellant.

GA/3/2024

The Court :- This application has been filed to restore the appeal which was dismissed for default by order dated 1st July, 2024. We are satisfied with the reasons given in the affidavit filed by the department and the application is allowed and the appeal is restored in the file of this court.

ITA/24/2020

This appeal has been filed by the revenue against the order dated 15th December, 2017 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA Nos.96-98/Kol/2016 for the assessment year 2010-2011 and 2012-13. The appeal was admitted on 22nd January, 2020 on the following question of law :

a. Whether on the facts and in the circumstances of the case the learned tribunal applied Section 206C of the Income Tax, 1961 properly in holding that the liabilities thereunder did not arise in case of traders in sawn timber ?

We have heard Mr. Soumen Bhattacharjee learned standing counsel for the appellant. Though the respondent has been served none appears for the respondent. After we have elaborately heard learned advocate for the appellant/department and carefully perused the material placed on record and from the order and reasoning given by the learned tribunal we find that the decision rendered by the tribunal cannot be faulted. Apart from other reasons the learned tribunal has followed the assessee's own case for the assessment year 2005-06 and 2009-10 on the very same issue and the decision was rendered in favour of the assessee and such decision has become final. The nature of transaction was identical and issue has already been concluded by the order passed by the learned tribunal in assessee's own case by order dated 6th April, 2024.

We are of the view that the tribunal was justified in following the said order. Apart from that the learned tribunal has also taken note of the decision of the Hon'ble Supreme Court in *Aspinwall and Co. Ltd. Vs.C.I.T.*(251 ITR 323 SC) and the decision in *Deputy CIT vs Pio Food Packers;* reported in 46 STC 63 SC. The learned Tribunal has also taken note of the decision of this Court in an identical case in *Shaw Bros, and Co. VS The State of West Bengal*, 1963, 14 STC 878, Kolkata.

Thus, we find that the learned Tribunal was right in allowing the assessee's appeal.

For the above reasons, the appeal filed by the revenue is dismissed and the substantial question of law is answered against the revenue.

Consequently, GA/3/2024 is dismissed treating the same as on day's list.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH