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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/147/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS
M/S. SREI INFRASTRUCTURE FINANCE LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 24th May, 2024.

Appearance :
Mr. Aryak Dutt, Adv.
Mr. Prithu Dudhoria, Adv.
...for appellant.

Mr. Somak Basu, Adv.
...for respondent.

The Court :- We have heard learned Counsel on either side.

There is a delay of 182 deays in filing the appeal.

The explanation offered by the appellant department is acceptable and, therefore, the delay in filing the appeal is condoned. The application is allowed.

This appeal filed by the Income Tax Department under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated May 22, 2023 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (the Tribunal) in ITA No. 1318/Kol/2019 and ITA No. 1538/Kol/2019 for the assessment year 2013-14. The revenue has raised the following substantial questions of law for consideration :-

a. Whether on the facts and in the circumstances of the case the ITAT was justified in law in upholding the order of the CIT[A] by deleting the addition of Rs.20,00,00,000/- on account of amount received on transfer of "Voting Right" by holding that cost of acquisition of the said rights could not be determined without considering the provisions of section 55[2][aa] of the I.T. Act, 1961 which explicitly provide for cost of acquisition of such asset as nil ?

b. Whether on the facts and in the circumstances of the case the ITAT was justified in law in upholding the order of the CIT[A] by deleting the addition of Rs.15,00,00,000/- on account of amount received from assignment of rights to subscribe to equity shares holding that cost of acquisition of the said rights could not be determined without considering provisions of section 55[2][aa] of the I.T. Act, 1961 which explicitly provide for cost of acquisition of such asset as nil ?

c. Whether on the facts and in the circumstances of the case the ITAT was justified in law in upholding the order of the CIT[A] by deleting the addition on account of amount received on transfer of Voting Right/assignment of rights to subscribe to equity shares holding that cost of acquisition of the said rights could not be determined without considering the provisions of section 55[2][aa] of the I.T. Act, 1961 which explicitly provide for cost of acquisition of such financial asset as nil; financial asset as defined by World Law Dictionary being a non-physical asset that can easily be converted into cash ?

d. Whether on the facts and in the circumstances of the case the ITAT was justified in law in relying upon Hon'ble Supreme Court case in the case of CIT vs. B C Srinivasa Setty [1981] 128 ITR 294 [SC] wherein issue of self-whereas issue under generated goodwill has been discussed consideration in case of assessee is transfer of Voting Right/assignment of rights to subscribe to equity shares ?

e. Whether on the facts and in the circumstances of the case the ITAT was justified in law in upholding the order of the CIT[A] by deleting the addition of Short Term Capital Gain of Rs.20,00,00,000/- on account of advance received from transfer of rights to purchase "the sale shares" at a future date without considering the fact that as per the binding agreement though the transfer of shares was to compulsorily happen at a future date but receipt of the advance payment was done during the year under consideration which automatically means transfer of property took place at the time of agreement as per section 2[47] of the IT Act, 1961 ?

f. Whether on the facts and in the circumstances of the case the ITAT was justified in law in upholding the decisions of the CIT[A] wherein it has been held that calculation of disallowance u/s 14A can be done considering only those investment which yielded exempt income during the year whereas explicit provisions of Act do not provide any such condition ?

g. Whether on the facts and in the circumstances of the case the ITAT was justified in law in holding that no interest expense disallowance can be made u/s 14A on basis presumption that investments have been made by assessee out of own funds/interest free fun ds without considering the fact that assessee failed to provide linkage/nexus between investment made and interest free funds ?

h. Whether on the facts and in the circumstances of the case the ITAT was justified in law in upholding the order of the CIT[A] deleting the addition of Rs.43,83,800/- made u/s 36(1)(iii) on the basis of presumption that investments have been made by assessee out of own funds/interest free funds ignoring that fact that assessee failed to provide linkage/nexus between investment made and interest free funds ?

i. Whether on the facts and in the circumstances of the case the ITAT was justified in law in upholding the order of the CIT[A] allowing deduction of Rs.7,61,48,526/- which was claimed by assessee only during assessment proceedings; without considering the fact that binding decision of Hon'ble Apex Court in the case of Goetze India Ltd., reported in 284 ITR 323 in applicable to Assessing Officer as well as CIT[A] who has conterminous role as of Assessing Officer ?

Mr. Somak Basu, learned Advocate appearing for the respondent/assessee submitted that the respondent company went into liquidation and the resolution plan has been approved by the National Company Law Tribunal by order dated 11.08.2023.

Since the resolution plan has already been approved the instant appeal has become infructuous and accordingly the same stands dismissed without any order as to costs.

The substantial questions of law raised are left open.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.