ORDER O – 35

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

ITA/56/2012
J. K. TYRE & INDUSTRIES LIMITED
VERSUS
COMMISSIONER OF INCOME TAX, CENTRAL - III, KOLKATA

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date : 5th March 2024.

Appearance:

Mr. Pranit Bag, Advocate
Mr. A. Agarwalla, Advocate
Ms. P. Guain, Advocate
Mr. V. Khaitan, Advocate
... for the appellant.

Ms. Smita Das De, Advocate
Mr. Prithu Dudheria, Advocate
... for the respondent.

1. Heard Sri Pranit Bag, learned counsel for the appellant and Smt. Smita Das De, learned senior standing counsel for the respondent.

2. This appeal was admitted by order dated 04.06.2012, on the following substantial question of law:-

> *"a) Whether the Tribunal was justified in law in upholding the assumption of jurisdiction by the Commissioner of Income Tax under section 263 of the Income Tax Act, 1961 in respect of the deduction of Rs.1,43,00,000/- allowed in the assessment under section 35(1)(i) in spite of its order dated October 29, 2009 directing the Commissioner of Income Tax (Appeals) to adjudicate*

the appellant's claim for weighted deduction under section 35(1)(ii) in respect of the said amount? If not whether the Tribunal was justified in law in holding that the assessment order dated December 19, 2007 allowing deduction under section 35(1)(i) of the Income Tax Act, 1961 in respect of Rs.1,43,00,000 paid to the Indian Institute of Technology, Madras for scientific research related to the appellant's business and so used was erroneous and prejudicial to the interest of the revenue and its purported findings in that behalf and upholding the Commissioner's order under section 263 are arbitrary, unreasonable and perverse?"

3. Learned counsel for the appellant states that pursuant to the order passed by the Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act, 1961'], the assessing officer passed an order dated 31.12.2010, against which, the assessee preferred an appeal before the CIT(A), Central-I, Kolkata for the assessment year 2005-06, which was allowed by the CIT(A), Central-I, Kolkata by order dated 20.12.2012. He further states that against the order of the CIT(A), the revenue filed ITA Nos.303-304/Kol/2013 (assessment year 2006-06) before the Income Tax Appellate Tribunal, Bench-B, Kolkata, which was dismissed by the Tribunal by order dated 06.10.2015. Thus, since the assessee has ultimately got relief as aforesaid, therefore, the present appeal, which arises out of order of the CIT passed under Section 263 of the Act, 1961, has become infructuous.

4. Learned senior standing counsel for the respondent does not dispute the aforesaid position.

5. In view of the aforesaid, the appeal is dismissed accordingly.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar