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

ITAT/97/2023
IA NO: GA/2/2023
PRINCIPAL COMMISSIONER OF
INCOME TAX 1 KOLKATA
VS
THE PEERLESS GENERAL FINANCE
AND INVESTMENT CO. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE : 5TH February, 2024.

Appearance :
Mr. Vipul Kundalia, Adv.
Mr. Amit Sharma, Adv.
..for appellant
Mr. Abhratosh Majumder, Adv.
Mr. Avra Mazumder, Adv.
Mr. Kausheyo Roy, Adv.
Mr. Samrat Das, Adv.
...for respondent.

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

This filed under Section 260A of the Income Tax Act, 1961 directed against the order dated 3.12.2020 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in I.T.A. No. 50/Kol/2009, for the assessment year 2002-03.

The respondent has raised the following substantial questions of law for consideration :-

i) Whether the Learned Tribunal is justified in holding that the [provision contained in clause (i) of Explanation (1) of sub-section (2) of 115JB of the Act is not attracted in the present case ?

ii) Whether the Learned Tribunal is justified in disposing of the case without deciding the issue of not filing of revised Return of Income while the respondent's computation filed subsequently is not a part of the original return of income without having filed any revised returns?

The Learned Tribunal, at the first instance examined the factual position of the assessee's case and noted that in P&L A/c the assessee has debited provision for diminution in value of investment and provision for NPA, which was noted by the Tribunal to be a provision for diminution and value of investment and provision for NPA and not a mere provision debited in the P&L account but an actual write off, since the said provisions were simultaneously removed from the corresponding asset side of the balance sheet. Further the learned Tribunal had analyzed all the documents which were placed before it in the form of a paper book which included the audited accounts in schedule "9" wherein in point No. 13(F), it has been mentioned that miscellaneous income include provision for diminution of investment and loans and advances being no longer required written back amounting to Rs.454.41 lakhs. After examining the records the learned Tribunal came to the conclusion that the said provision for diminution of investment would amount to actual write off of provision from the assets side and, therefore, would not attract clause [i] of the explanation to sub Section 2 of Section 115 JB of the Act. After noting the factual position the learned Tribunal had followed the decision of the Larger Bench of the High Court of Gujarat in the case of Commissioner of Income tax Vs. Vodafone Essar Gujarat Ltd., [2017] 85 taxmann.com 32 (Gujarat). This decision was affirmed by the Hon'ble Supreme Court as a Special Leave Petition filed against the said order was dismissed. Further we find that identical issue was considered in the case of Principal Commissioner of Income Tax Vs. Vaibhav Global Ltd. [2023] 151 taxmann.com 114 (Raj), in which substantial question of law No. 4 therein was identical to that of the questions which have been suggested by the revenue in this appeal.

Thus, we are of the clear view that the learned Tribunal rightly dismissed the appeal filed by the revenue and no grounds had been made out to interfere with the order of Tribunal. Accordingly, the appeal is dismissed and substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)

pkd/GH.