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ORDER SHEET
ITAT/124/2023
IA NO: GA/2/2023
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION(INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
-VS-
M/S INDIAN OIL PETRONAS PVT LTD

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

DATE: 19TH JANUARY 2024.

Mr. V. Kundalia, Adv.; Mr. A. Sharma, Adv., for appellant.
Mr. R.K. Murarka, Sr. Adv.; Ms. P. Pain, Adv., for respondent.

The Court: This appeal filed by the revenue under section 260A of the Income Tax Act, 1961 is directed against an order dated March 16, 2022, passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No.1468/Kol/2015 for the assessment year 2009-10.

The revenue has raised the following substantial question of law for consideration:

> "Whether the Learned Tribunal substantially erred in allowing the claim of the assessee in respect of subsidy granted by the Government of West Bengal by way of sales tax remission, when such claim was not made in

the Return of Income of the assessee or by filing a revised return of income?"

We have heard Mr. Vipul Kundalia, learned Senior Standing Counsel, along with Mr. Amit Sharma, Standing Counsel, for the department, and Mr. Ranajit Kumar Murarka, Senior Advocate, appearing for the respondent.

The issue involved in this appeal lies in a very narrow compass, namely as to whether the subsidy granted to the respondent-assessee by the State Government for setting up an industrial unit in a backward district of West Bengal is to be held to be capital receipt or revenue receipt.

The Tribunal confirmed the order passed by the Commissioner of Income Tax (Appeals) after examining the factual position, more particularly the nature of the benefit granted under the scheme framed by the State of West Bengal. Apart from that, the learned Tribunal noted that in the assessee's case for the assessment year 2010-11 in ITA No.1930/K0l/2016 for the assessment order dated March 15, 2019, the case of the assessee was accepted and the subsidy was treated to be a capital receipt. The said order passed by the learned Tribunal in the assessee's own case for the assessment year 2010-11 has attained finality and the department has not preferred any appeal.

Furthermore, it has been rightly noted by the learned Tribunal including the decision of this Court in the case of CIT –vs- Rasoi Ltd., 335 ITR 438.

Thus, we find no ground to interfere with the order passed by the learned Tribunal. Accordingly, the appeal fails and is dismissed along with the connected application.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

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