

OD - 1 & 2

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITA/125/2012
COMMISSIONER OF INCOME TAX, CENTRAL
- 1, KOLKATA
VS
M/S. MBL INFRASTRUCTURE LIMITED

ITA/126/2012
COMMISSIONER OF INCOME TAX, CENTRAL
- 1, KOLKATA
VS
M/S. MBL INFRASTRUCTURE LIMITED

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI

And

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date : 30th April, 2024

Appearance :

Smt. Smita Das De, Adv.

...for the appellant.

Mr. J.P. Khaitan, Sr. Adv.

Mr. Saumya Kejriwal, Adv.

Ms. Pritha Basu, Adv.

Ms. Ananya Rath, Adv.

Ms. Ankita Agrahari, Adv.

..for the respondent.

1. Heard Smt. Smita Das De, learned senior standing counsel for the appellant and Sri J.P. Khaitan, learned senior advocate assisted by Sri Saumya Kejriwal, learned counsel for the respondent.

2. ITA/125/2012 relates to assessment year 2004-05 and ITA/126/2012 relates to assessment year 2005-06. Both the appeals arise out of the common impugned order of the Income Tax Appellate Tribunal, Bench -A, Kolkata dated

7.12.2011 in ITA Nos.1056 and 1057/Kol/2009 relating to assessment years 2004-05 and 2005-06.

3. ITA/125/2012 was admitted by an order dated 14.9.2012 passed by this Court. In ITA/126/2012 this Court passed an order dated 14.9.2012 observing that the order passed in ITAT/192/2012 (ITA/125/2012) will govern this matter and this matter will be heard analogously along with ITAT/192/2012 (ITA/125/2012). The substantial questions of law framed by this Court by order dated 14.9.2012 passed in ITA No.125 of 2012 are reproduced below :

"(i) Whether on the facts and in the circumstances of the case the order of Income Tax Appellate Tribunal is perverse in as much as it has failed to consider the observation of Settlement Commission in arriving at the decisions.

(ii) Whether the Learned Income Tax Appellate Tribunal erred in law in not following and/or observing the provision of Section 292C of the Income Tax Act and wrongly passed the order only on the basis of the arguments of the assessee".

4. We have heard learned counsels for the parties and carefully perused the paper book. Learned counsel for the appellant and the learned counsel for the respondent carried us to the impugned order of the ITAT, the order of the CIT(A) and the assessment order.

5. We find that the CIT(A) has well-considered the entire controversy in paragraphs 3.2 to 7.3 of the order dated

13.3.2009. The Tribunal has also well-considered the entire aspect of the matter in paragraphs 4 to 6 of the impugned order. The findings recorded by the CIT(A) and the ITAT in the impugned order, are findings of fact based on consideration of relevant evidences on record including the order of the settlement commission. We have carefully gone through the findings recorded by the CIT(A) and the ITAT and we do not find any perversity in it. The findings recorded in the impugned order of the ITAT do not suffer from any perversity. Under the circumstances, we do not find any good reason to interfere with the impugned order of the ITAT.

6. For all the reasons afore-stated, we do not find any merit in both the appeals. Consequently, both the appeals are dismissed. Both the substantial questions of law are answered in favour of the assessee and against the revenue.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

