OD – 26

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

ORIGINAL SIDE

ITAT/268/2023
IA NO: GA/2/2023

PRINCIPAL COMMISSIONER OF
INCOME TAX 2 KOLKATA
VS
M/S KARAM CHAND THAPAR AND BROS
COAL SALES LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 31st January, 2024

Appearance :
Mr.Tilak Mitra, Adv.
Mr.Prithu Dudheria, Adv.
...for the appellant.

Mr.Shashwat Nayak, Adv.
Mr.Barnik Ghosh, Adv.
...for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 28th February, 2023 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (the Tribunal) in ITA No.320/Kol/2021 for the assessment year 2015-16.

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 Learned Income Tax Appellate Tribunal was erred in sustaining the order of C.I.T(A), which deleted the transfer pricing adjustment of Rs.7,71,77,867/- made on account of Corporate*

> *guarantee given by the Assessee on behalf of its Associated Enterprises?*
>
> *(b) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was erred in law in sustaining the order of CIT(A), which did not follow a recognized approach for arriving at the CG Fee and further erred in arbitrarily adopting a rate of CG Fees based on judgments which are factually different?"*

After elaborately hearing the learned advocates for the parties and carefully perusing the materials on record and the reasoning given by the Commissioner of Income Tax (Appeals) [CIT(A)] in his order dated 29th June, 2021 and the finding of the learned Tribunal, we find that the learned Tribunal has examined the aspect and found that the average rate of corporate guarantee commission has been accepted for several decisions of the Tribunal at 0.5% and the assessee in the instant case has already charged a guarantee commission at 0.5% from the associated enterprises. Further, it was found on facts that this charge of commission compares favourably with the Bank of Singapore usually charge commission in the range of 0.15%. Therefore, it was held that the upward adjustment made on account of corporate guarantee commission cannot be sustained and, accordingly, the same was deleted. The Tribunal noted the decision in the case of PCIT Vs. Redington (India) ltd. [2020] 122 taxmann.com 136 (Mad) and applied the same to the facts of the case and held in favour of the respondent/assessee. Thus, we find that there is no substantial question of law arising for consideration.

Hence, the appeal fails and the same is dismissed. The connected application stands closed.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(SUPRATIM BHATTACHARYA, J.)

S.Das/