OD-4

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITA/27/2022

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-I
VS
M/S HOOGHLY MILLS CO. LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 5th August, 2025.

*Appearance :*
*Mr. Smarajit Roychowdhury, Adv. …for appellant.*

*Mr. Sourav Bagaria, Adv.*
*Mr. Rites Goel, Adv. …for respondent.*

The Court : - This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 15.7.2016 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA/547/Kol/2011 for the assessment year 2006-2007.

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

> *"1. Whether on the facts and circumstances of the case the Hon'ble Income Tax Appellate Tribunal, "A" Bench, Kolkata erred in quashing the order u/s 263 of the Act passed by the Ld.CIT on the issues of deemed dividend, gratuity liability, employee contribution, and liability u/s 14 r/w Rule 8D?"*

We have heard learned advocates on either side.

When the matter was last heard on 14.7.2025 the learned advocate appearing for the respondent/assessee submitted that the appeal filed by the revenue has become infructuous. Therefore, an order was passed on 14.7.2025 directing the department to give written instruction to the learned senior standing counsel. By e-mail dated 28.7.2025, the learned senior standing counsel has been informed that the papers are not available with the department and seeks time to furnish relevant information.

Considering the facts and circumstances, we are of the view that no useful purpose would be served by keeping the appeal pending in the light of the following reasons.

The original assessment was completed under section 143(3) by an order dated 31.12.2008 against which the assessee filed an appeal before the CIT(A) which was allowed by order dated 28.1.2011. The revenue challenged the said order before the Tribunal in ITA/601/Kol/2011 which was dismissed by an order dated 22.1.2025. The revenue challenged the said order before this court in ITA/58/Kol/2018 which was dismissed by this court by judgment dated 8.4.2016. On the same day, when the original assessment was issued under section 143(3) of the Act by an order dated 31.12.2008, the Commissioner of Income Tax invoked his power under section 263 of the Act and by order dated 1.3.2011 set aside the assessment order dated 31.12.2008. The said order passed under section 263 of the Act was challenged by the assessee before the Tribunal in ITA/547/Kol/2011 which was allowed quashing the order passed under section 263 by an order dated 15.7.2016 against which the present appeal has been filed. In the meantime, pursuant to the direction issued by the Commissioner under section 263 of the Act, the assessing officer took up the assessment for fresh consideration and fresh assessment was passed on 30.8.2011. Aggrieved by the same, the assessee preferred appeal before the CIT(A) which was allowed by an order dated 12.12.2013. The revenue challenged the said order before the Tribunal being ITA/421/Kol/2014 which was dismissed by the learned Tribunal by an order dated 1.3.2017 and no further appeal has been filed against the said order and the same attained finality.

In the light of the above facts, the present appeal filed by the revenue has become infructuous. Accordingly, the appeal stands dismissed and the substantial question of law admitted for consideration is left open.

The written instruction filed in Court today is taken on record.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

SM/Pkd.
AR(CR)