

OD - 7

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

ITAT/208/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX SILIGURI
VS
M/ DILIP KUMAR DAS AND SONS

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 16th April, 2025.

Mr. Amit Sharma, Adv. ...for appellant.

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 14.12.2023 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata [Tribunal] in ITA NO.2514/KOL/2019 for the assessment year 2013-14. The revenue has raised the following substantial questions of law for consideration.

"(i) Whether in the Learned Income Tax Appellate Tribunal has substantially erred in law in dismissing the appeal of the revenue by directing the Revenue to estimate the profit of the assessee at @6.75% on the gross turnover and sustaining the addition only to the extent of the difference between the net profit rate of 6.75% estimated as against the net profit declared by the assessee in its Return?

(ii) Whether in the Learned Income Tax Appellate Tribunal has committed substantial error of law by dismissing the appeal of the revenue by directing the

revenue in the wake of the fact that the CIT(A) had upon rejecting the books of accounts of the assessee had deleted the addition of Rs.75,00,000/- made under section 40(a)(ia) of the Income Tax Act, 1961 and estimated the profit of the assessee at 8%?”

We have heard Mr. Amit Sharma, learned advocate for the appellant/revenue. Though the notice has been served on the respondent/assessee as well as the learned advocate, who appeared for the respondent/assessee before the tribunal, none appears for the respondent/assessee.

The short issue which falls for consideration is whether the learned tribunal was right in sustaining the addition @ 6.75% as against the profit estimated by the CIT(A) at 8%. It is not in dispute that identical issue arose in assessee's own case for the assessment years 2011-12 and 2014-15 and the tribunal sustained the addition at 6.75%. The Tribunal in the said order had given elaborate reasons as to how the estimate should be 6.75% on the contractual turn-over of the assessee and how it will be just, fair and reasonable. It is not in dispute that the said order passed by the Tribunal for the assessment years 2011-12 and 2014-15 has attained finality and, therefore, it will bind not only the assessee as well as the department. Therefore, the Tribunal cannot be faulted for having not followed the said order for the assessment year under consideration, namely, 2013-14. Though it could be the case of the revenue that the revenue did not prefer any appeal considering the tax effect, yet inter parties, namely, between the assessee and the department, the findings rendered by the Tribunal for the two assessment years 2011-12 and 2014-15 would bind the department since the facts and circumstances are identical and no distinguishing feature have been pointed out by the revenue.

Thus, we find no question of law much less substantial question of law arises for consideration in this appeal. Accordingly, the appeal fails and the same is dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)