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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income tax)
ORIGINAL SIDE

IA No.GA 2 of 2017 (Old No.GA 3519 of 2017)

In

ITAT 343 of 2017

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, KOLKATA

Vs.

M/S. DHANSAR ENGINEERING CO. PVT. LTD.

BEFORE:

The Hon'ble JUSTICE T. S. SIVAGNANAM

AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 14th December, 2021.

Appearance:

Mr. P.K. Bhowmik, Adv.

Mr. Soumen Bhattacharjee, Adv.

...for the appellant.

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

Ms. Swapna Das, Adv.

Mr. Sanjoy Bhowmik, Adv.

Mr. Siddharth Das, Adv.

...for the respondent.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 9th November, 2016 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata (the 'Tribunal') in ITA No.920-923/Kol/2013 for the assessment Year 2007-08 to 2010-2011 and also ITA 467-468/Kol/2013 for the assessment year 2009-10 and 2010-11.

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

- a) *Whether in the facts and circumstances of the case the Tribunal was justified in law in cancelling the assessments framed under section 153C of the Act for the assessment years 2007-08 to 2009-10 and its purported findings in this regard are arbitrary, unreasonable and perverse ?*
- b) *Whether on the facts and circumstances of the case the Tribunal was justified in law in holding that the assessee is eligible for the claim of additional depreciation under section 32(1)(iia) of the Act and allowed the deduction of Rs.6,93,39,027/- for the assessment year 2010-11 and its purported findings in this regard are arbitrary, unreasonable and perverse ?*
- c) *Whether on the facts and circumstances of the case the Tribunal was justified in law in deleting the additions of Rs.5,97,332/- made u/s 14A of the Act for the A.Y. 2010-11 on the ground that the investments made by the assessee in the group companies shall not be considered while applying the provisions of Section 14A read with rule 8D and its purported findings in this regard are arbitrary, unreasonable and perverse ?*

We have heard Mr. P. K. Bhowmik, learned standing Counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned Senior Counsel appearing for the respondent/assessee.

These appeals are directed against the common order passed by the Tribunal for the assessment years 2007-08, 2008-09, 2009-10 and 2010-11. Out of the four assessment years, the assessment for the years 2007-08 and

2008-09 are below tax effect. Therefore, this appeal is dismissed in so far as the assessment years 2007-08 and 2008-09 on the ground of low tax effect.

This leaves us to decide the case of the department for the remaining two assessment years, namely, 2009-10 and 2010-11. The first substantial question which has been raised before us is with regard to the cancellation of the assessment framed under Section 153C of the Act. We have carefully perused the finding recorded by the Tribunal and the materials which were made available before the Tribunal. The Tribunal after taking note of the factual position which was available both before the Assessing Officer and the Commissioner of Income Tax (Appeals) [CIT (A)] held that there is nothing to indicate that the seized documents were disclaimed by NKG in whose case search was conducted. Furthermore, the Tribunal pointed out that the Assessing Officer has not referred to any material to indicate that the assessee is the owner of those seized documents. Thus, on facts, the Tribunal held that the Assessing Officer was not justified in exercising jurisdiction under section 153C of the Act. Thus, we find that there is no question of law much less substantial question of law arising for consideration on this issue.

The second question is with regard to the claim for additional depreciation under Section 32(1)(iia). The Tribunal had taken note of the decision of this Court in the case of CIT Vs. G. S. Atwal & Company in 254 ITR 592 for the proposition that mining of coal is production. Applying the said decision the Tribunal granted relief to the assessee. This issue has also been settled by the Hon'ble Supreme Court in the case of CIT vs. Sesa Goa Ltd. reported in (2004) 271 ITR 331 wherein it was held that extraction and

processing of mineral ore amounts to “production” within the meaning of word under Section 32A(2)(b)(iii) of the Act”. Thus, the finding rendered by the Tribunal does not call for any interference.

The third substantial question of law is with regard to the correctness of the order passed by the Tribunal deleting the addition made under Section 14A for the assessment year 2010-11. The Assessing Officer in his order dated 29.12.2011 held that the assessee company during the year was having investment of Rs.1,04,00,504/- income which would not form part of the total income of the assessee and that the interest has also been paid during the year. Accordingly, a sum of Rs.5,97,332/- was disallowed applying Rule 8D of the Income Tax Rules. Thus, the finding recorded by the Assessing Officer is bereft of particulars and devoid of reasons. The CIT(A) before whom the assessee challenged the said finding while dealing with ground no.(a) has extensively referred to the submission made by the assessee and has, in fact, extracted the entire contents of the grounds. The particulars furnished by the assessee would show that the investment of Rs.16,67,334/- was made from the surplus generated during the financial year 2008-09 of Rs.15,80,41,741/- and, therefore, the assessee’s contention was that the investments were made out of loan funds would not arise. The assessee further contended that when their own funds have been deployed for the investment, there is no income which is not included while computing the total income of the assessee and Section 14A would not apply. The assessee also challenged the finding of the Assessing Officer as being not a speaking order and cryptic. Though such was the contention, the CIT(A) noted that the

assessee has furnished the position of its own funds vis-à-vis the total investment but declined relief to the assessee by observing that the assessee has not shown that the shares were acquired from its own fund without taking benefit of loan. When this finding was challenged before the Tribunal, we find that the Tribunal in paragraph 38 of the impugned order has proceeded on a different footing by making a reference that the investment is in the interest of a strategic investment. Though such a contention has been raised during the course of argument, the issue itself was whether this investment was from the own funds or borrowed funds. This exercise appears to have not been done by either the Assessing Officer or the CIT(A) or the Tribunal.

Therefore, we are of the view that the third issue which arises for only one assessment year, namely, 2010-11 requires to be remanded to the Assessing Officer for a fresh decision. In the result, we find that question no. (a) as raised above does not arise for consideration in this appeal as we find that the entire matter is factual.

So far as the substantial question law no.(b) is concerned, the same is answered against the revenue and so far as the substantial question no.(c) is concerned, the same is left open and the findings rendered by the Tribunal as well as the CIT(A) and the Assessing Officer are set aside and the Assessing Officer is directed to re-examine the issue with regard to the addition under Section 14A after taking note of all the documents that were placed before the Assessing Officer.

In the result, the appeal is partly allowed. The connected application also stands disposed of.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/pa