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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/38/2022
IA No:GA/2/2022; GA/3/2022
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2
VERSUS
GOVIND PROMOTERS PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 11th July, 2022.

Appearance:-
Mr. Soumen Bhattacharjee, Adv.
...for Appellant
Mr. Anil Kumar Dugar, Adv.
Mr. Rajarshi Chatterjee, Adv.
... for Respondents

GA/3/2022

The Court :- This application has been filed by the respondent/assessee to recall the order dated 20th June, 2020 by which discretion was exercised and the delay in filing the appeal was condoned.

After we have elaborately heard the submissions of the learned counsel for the applicant/assessee and the learned standing counsel, we are of the view that the order need not be recalled as the question of law which has been raised for consideration in the main appeal by the revenue is covered by a decision in the case of PRINCIPAL COMMISSIONER OF

INCOME TAX VS. SUPROVA INDUSTRIES LIMITED; 2022 136 taxmann.Com
259(Cal).

Therefore, the application being GA/3/2022 is dismissed.

ITAT/38/2022

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act for brevity) is directed against the order dated 29th May, 2019 passed by the Income Tax Appellate Tribunal “A” Bench, Kolkata (Tribunal) in ITA Nos. 546, 547 & 548 (Kol) 2018 for the assessment years 2012-13, 2013-14 and 2014-15.

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

- i) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law in setting aside the order passed under section 263 of the Income Tax Act, 1961 holding that section 2(22)(e) was not applicable to the loan amounts in question received by the assessee during the year under consideration from other group companies ?
- ii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal misread and interpreted section 2(22)(e) of Income Tax Act, 1961 and erred in law in not holding that to avoid payment to tax on “dividend” the assessee has obtained loan from Vijayshree Industries (P) Ltd. and Mantri Engineering company in which the assessee is holding 19.34% shares and

49.88% shares as such the loan amount of Rs.5,07,00,000/- and Rs.75,00,000/- be treated as the income of the assessee and comes under the mischief of section 2(22)(e) of the Income Tax Act, 1961 for assessment year 2012-13?

- iii) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law in setting aside the order under section 263 of the Income Tax Act, 1961 completely ignoring the facts that the Assessing Officer in original assessment order passed under section 153A/143(3) of the Act, 1961 erroneously not added income of Rs.5,82,00,000/- being deemed dividend under section 2(22)(e) of the Income Tax Act, 1961 chargeable to tax without making any enquiry and verification whatsoever which rendered the assessment order erroneous and prejudicial to the interest of the revenue ?
- iv) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in setting aside the order under section 263 of the Income Tax Act, 1961 in accordance of its purported finding that the Assessing Officer has not only made the enquiry or verification as required but a conscious decision was taken by him that section 2(22)(e) of the Income Tax Act, 1961 is not applicable to the loan transaction which is arbitrary, unreasonable and perverse ?

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel appearing for the appellant/revenue and Mr. Dugar, learned Counsel appearing for the respondent assessee. It is not disputed before us that the question of law which has been raised for consideration was considered in the case of PRINCIPAL COMMISSIONER OF INCOME TAX VS. SUPRABHA INDUSTRIES LTD.; (2022) 136 taxmann.com 259(Calcutta), wherein it was held that Section 2(22)(e) of the Act would not be applicable where the assessee availed unsecured loan from its group company which was paid back with interest in the same year.

In the light of the above, following the decision in the case of PRINCIPAL COMMISSIONER OF INCOME TAX VS. SUPRABHA INDUSTRIES LTD.; (2022) 136 taxmann.com 259(Calcutta), the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

Accordingly, the application being GA/2/2022 stands dismissed.

(T.S. SIVAGNAM, J.)

(BIVAS PATTANAYAK, J.)