IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
Original Side

Present :- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Justice Amrita Sinha

ITA 313 OF 2008

Commissioner of Income Tax Kolkata-III
VS.
M/s. Ananda Bazar Patrika Pvt. Ltd.

For the Appellant	**:-**	**Ms. S. N. Dutta,** **Mr. Sujit Mitra.**
For the Respondent	**:-**	**Mr. J. P. Khaitan, Sr. Adv.** **Ms. Anupa Banerjee,** **Mr. Agnibesh Sengupta,** **Mr. Tanmoy Chakraborty,** **Ms. Arti Bhattacharyya.**
Judgement On	**:-**	**31.01.2019**

I.P. MUKERJI, J.:-

This matter has to be remanded to the tribunal. The basic substantial question of law framed by the Division Bench of our Court by its order dated 5th September, 2008 on which the appeal was to be heard was as follows:

> *"(b) Whether on the facts and in the circumstances of the case, the learned Tribunal failed to consider that additional depreciation was introduced by Finance Act, 2002 and it was to be allowed only if assets are acquired and installed after 1.4.2002 and therefore the additional depreciation of*

Rs.5,61,23,019/- was wrongly allowed by the Assessing Officer as the assessee although purchased the assets before 1.4.2002 but the assets were admittedly installed after 1.4.2002?

Let paper book be prepared by the appellant and be served upon the respondent within four weeks after vacation.

Let the appeal appear six weeks after vacation."

The question involved concerned Section 32(1)(iia) of the Income Tax Act which provided for additional depreciation on acquisition and installation of machines to be made after 31st March, 2002. That is to say the machines had to be acquired and installed on 1st April, 2002 and thereafter in the Previous Year 2002-2003 of which the relevant Assessment Year was 2003-2004.

According to the Commissioner of Income Tax, Kolkata-III in the order dated 27th March, 2007 the additional depreciation of Rs.5,61,23,019/- was wrongly allowed to the assessee. The machines according to her were purchased before 31st March, 2002 but installed after 31st March, 2002.

The appeal went to the tribunal. It came to a wholly contrary view in its order dated 30th October, 2007. The material part is set out below:-

"..............The ld. CIT in this case has objected to the action of the A.O. in accepting the plea of the assessee that the purchases were only made after 31/03/2002. She has observed that the assets were actually purchased by the assessee before 01/04/2002 and therefore such assets

were not eligible for additional depreciation......................The assessee has also made available of the documents and evidences in support of its claim which forms part of the paper book. It has also been claimed that all the documents and evidences were filed before the A.O. and after perusing the same the A.O. has allowed the claim of additional depreciation to the assessee.................However, such observation of the ld. CIT is without rebutting the evidences and documents placed on record by the assessee whereas the A.O. has allowed the claim of the assessee after perusing the relevant documents and evidences placed by the assessee before him and thereafter accepted the claim of the assessee."

The reasons sought to be advanced by the tribunal, regrettably show absolute non-application of mind. Where evidence is cited in support of proof of a fact the exact materials on which such inference is being drawn have to be specified. After all, the tribunal is the final fact finding authority. Saying "all the documents will be found in the paper book" amounts to dealing with the matter very cursorily. The factum of sale/acquisition of the machines has to be proved legally in terms of payment of consideration, date of delivery, passing of property, the terms and conditions of contract etc. The installation of the assets has also to be established in a like manner.

In our opinion, such absence of reasons on a factual issue in the order of the tribunal which is the final authority on facts is itself a substantial question of law from which an appeal lies to the High Court under Section 260A of the Income Tax Act. Otherwise, a party would be deprived of remedy.

That part of the order of the tribunal dealing with additional depreciation is set aside.

The tribunal is directed to re-hear the parties on the above issues and pronounce a fresh order **within 6 months** from the date of communication of this order.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(AMRITA SINHA, J.) **(I. P. MUKERJI, J.)**