(2022) 01 CAL CK 0004

In the Calcutta High Court

Case No : ITAT No. 96 Of 2018, IA No. GA/2/2018 Old No.GA/831/2018)

Principal Commissioner Of Income Tax, Asansol APPELLANT

Vs

Eastern Coalfields Ltd. RESPONDENT

Date of Decision : 04-01-2022

Acts Referred:
Income Tax Act, 1961 — Section 260A, 264

Citation : (2022) 01 CAL CK 0004

Hon'ble Judges : T. S. Sivagnanam, J;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : P. K. Bhowmick, S. Bhattacharya, J.P.Khaitan, Swapna Das, Siddhartha Das

Final Decision : Dismissed

Judgement

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the â??Actâ?? in brevity) is directed against the order dated 26th

July, 2017 passed by the Income Tax Appellate Tribunal, â??Bâ? Bench, Kolkata (the â??Tribunalâ?? in short) in ITA No.1637/Kol/2014 and ITA

No.1654/Kol/2014 for the assessment year 2006-07.

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

(i) Whether in the facts and circumstances of the case, the Learned Tribunal erred in law and on facts by upholding the decision of the CIT(Appeals),

Asansol in deleting the addition of Rs.87,88,03,000/-made by the assessing officer on account of disallowance of â??Cess Equalisation Reserveâ?

being suppressed income by the assessee?

(ii) Whether in the facts and circumstances of the case, the Learned Tribunal erred in law and on facts by allowing the claim of the assessee which was made as the additional ground for the fist time before the CIT (Appeals), Asansol by ignoring the fact that no such claim was made either at the

time of filing of the original return or revised return or in the form of any letter filed by the assessee during the course of the assessment year 2006-

07?

(iii) Whether in the facts and circumstances of the case, the Learned Tribunal erred in law by circumventing the provisions of Section 264 of the

Income Tax Act, 1961 by admitting the additional claim of the assessee made for the first time before the CIT (Appeals) which had not been made at

the time of filing of its return of income or through any other process in the course of the assessment year 2006-07?

We have heard Mr. P. K. Bhowmick, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel

assisted by Ms. Swapna Das, learned counsel appearing for the respondent/ assessee.

So far as the substantial question no (i) is concerned, in the assesseeâ??s own case we have held in favour of the assessee by dismissing the appeal

filed by the revenue in ITAT No.230 of 2017 (PCIT, Asansol Vs. M/s. Eastern Coalfields Ltd.) dated 14th December, 2021. Following the said

decision, this substantial question no.(i) is answered against the revenue.

The other substantial questions of law are all concerning the power of the appellate authority/tribunal to entertain an additional claim. This issue is no

longer res integra and as pointed out by the Tribunal, the decision which was relied upon by the CIT (Appeals), namely, the decision in Goetz India

Ltd. Vs. CIT 284 ITR 323 (SC) does not impinge on the power of the appellate authority and it only deals with the power of the assessing officer to

entertain an additional claim without the revised return. The identical question was considered by the Honâ??ble Division Bench of this Court in the

case of Commissioner of Income Tax Vs. Britannia Industries Ltd. reported in [2017] 396 ITR 677 (Cal) and held that the Tribunal has power to

direct the assessing officer to accept the claim of the assessee though it had not been made in the original return nor claimed in the revised return.

In the light of the above, the substantial questions of law no. (ii) and (iii) are answered against the revenue.

Accordingly, the appeal (ITAT/96/2018) fails and stands dismissed.

The connected application for stay (IA No.GA/2/2018) also stands dismissed.

