IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2249 OF 2019

Superior Financial Consultancy Services Ltd. … Petitioner
Vs.
ACIT - 1(3) and another … Respondents

Mr. D. H. Jain a/w. Ms Radha Halbe for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : UJJAL BHUYAN,
MILIND N. JADHAV, JJ.

DATE : MARCH 06, 2020

P.C. :

Heard Mr. Jain, learned counsel for the petitioner and Mr. Kumar, learned standing counsel Revenue for the respondents.

2. By filing this petition under Article 226 of the Constitution of India, petitioner seeks interference with the impugned order dated 12.04.2019 passed by the Income Tax Appellate Tribunal, Mumbai Bench ‘G’, Mumbai (briefly ‘the Tribunal’ hereinafter) in M.A. No.632/Mum/2018 arising out of I.T.A.No.7501/Mum/2016 for the assessment year 2003-04 pertaining to ground No.2 of the said appeal.

3. To appreciate the grievance expressed by the petitioner and the reliefs sought for, a brief reference to the order passed by the Tribunal is considered apposite.

4. It appears that petitioner had filed two appeals before the Tribunal, one for the assessment year 2006-07 and other for the assessment year 2003-04. For the assessment year 2006-07, the appeal was registered as I.T.A.No.3113/Mum/2015 and the appeal for the assessment year 2003-04 was registered as I.T.A.No.7501/Mum/2016. The two grounds urged by the petitioner before the Tribunal in the

appeal for the assessment year 2003-04 were as under:

> "1. On the facts and in the circumstances of the case and also in law, the learned CIT(A) erred in upholding legal validity of the reassessment proceedings. Your appellant submits that the proceedings initiated u/s.147 of the Act was bad in law and illegal. Your appellant, therefore, prays that the assessment order dated 26.12.2008 passed u/s. 143(3) r/w. Section 147 of the Act be quashed.
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> 2. On the fact and circumstances of the case and also in law, the learned CIT (A) erred in confirming the addition of Rs.76,81,824/- made by the Ld. AO on account of conversion by the appellant of the shares held as stock-in-trade into investments on 1.4.2002. The learned CIT(A) failed to appreciate and ought to have held that no income arose to the appellant on such conversion that was an unilateral act by the appellant and it was not a transaction giving rise to any income. Your appellant, therefore, prays that the addition be deleted."

5. On the other hand, the sole ground urged by the petitioner before the Tribunal in the appeal pertaining to the assessment year 2006-07 was as under:

> "1. On the facts and in the circumstances of the case, and also in law, the learned CIT(A) erred in enhancing the assessment by bringing to tax a sum of Rs.9,11,883/- u/s.41(1) of the Act being the difference between the cost of acquisition of the shares at which the same were converted from stock-in-trade into investments as on 1.4.2002 and the book value of the said share held as stock-in-trade as on 31.03.2002 prior to the conversion. Your appellant submits that the learned CIT(A) erred in rejecting the appellant's contention that provisions of Section 41(1) did not apply in this case. Your appellant, therefore, prays that the addition of Rs.9,11,883/- be deleted."

6. It further appears that Revenue also filed appeal before the Tribunal for the assessment year 2006-07, which was registered as I.T.A.No.3355/ Mum/2015. The three appeals were heard together by the Tribunal and disposed of by the order dated 30.05.2018. On perusal of the order dated 30.05.2018, it is seen that the appeal preferred by the Revenue for the assessment year 2006-07 i.e., I.T.A.No.3355/Mum/2015 was dismissed. Thereafter the Tribunal proceeded to deal with the issue involved in the appeal filed by the assessee without disclosing the appeal for which particular assessment year. However, from a reading of

paragraph 7 of the Tribunal's order dated 30.05.2018, it is discernible that the Tribunal was considering the issue whether the Commissioner of Income Tax (Appeals) was justified in directing the assessing officer to make addition of Rs.9,11,883.00 being the difference between the book value of shares held as stock-in-trade as on 31.03.2002 and the cost thereof on conversion into investment as on 01.04.2002, treating the same as business income under Section 41(1) of the Income Tax Act, 1961 ('the Act' for short). We find that this was the sole ground of appeal by the petitioner in the appeal for the assessment year 2006-07.

7. After due consideration, Tribunal affirmed the view taken by the Commissioner of Income Tax (Appeals) and dismissed the appeal of the petitioner. In paragraph 12 of the order, Tribunal indicated that "both the appeal of assessee and revenue are dismissed". The appeal of the assessee and revenue thus pertained to the assessment year 2006-07.

8. With the grievance that there was no adjudication on the appeal filed by the petitioner for the assessment year 2003-04, petitioner filed an application under Section 254(2) of the Act for hearing of its appeal for the assessment year 2003-04 contending that omission to deal with the said appeal was a mistake apparent from the record and which was required to be corrected under Section 254(2) of the Act.

9. The said application was registered as M.A.No.632/Mum/2018. By order dated 12.04.2019, Tribunal partly allowed the said application by noting that in the order dated 30.05.2018, Tribunal had discussed ground No.1 of the appeal for the assessment year 2006-07 along with ground No.2 of the appeal for the assessment year 2003-04 whereafter both the appeals were dismissed. However, Tribunal noted that insofar ground No.1 in the appeal for the assessment year 2003-04 was concerned, there was no discussion by the Tribunal in the order dated 30.05.2018. Accordingly, Tribunal recalled its order dated 30.05.2018 *qua* ground No.1 in the appeal for the assessment year 2003-04.

10. Raising the grievance that ground No.2 in the appeal for the assessment year 2003-04 was also not considered by the Tribunal in its order dated 30.05.2018, which also is required to be re-heard and to that extent assailing the order dated 12.04.2019, present writ petition has been filed.

11. Submissions made by learned counsel for the parties have been considered. Also considered the materials on record.

12. We have carefully perused the order passed by the Tribunal dated 30.05.2018 as well as the grounds urged by the petitioner in both the appeals. We find that while passing the order dated 30.05.2018, Tribunal had dismissed the appeal of the petitioner for the assessment year 2006-07 i.e., I.T.A.No.3113/Mum/2015 along with the appeal of the revenue being I.T.A.No.3355/Mum/2015 for the same assessment year. There was omission to deal with the appeal of the petitioner for the assessment year 2003-04 i.e., I.T.A.No.7501/Mum/2016.

13. That being the position and on due consideration, we interfere with the impugned order dated 12.04.2019 passed by the Tribunal in M.A.No.632/Mum/2018 to the effect that order dated 30.05.2018 would stand recalled *qua* both the grounds in I.T.A.No.7501/Mum/2016.

13.1. Tribunal shall now hear the aforesaid appeal being I.T.A.No.7501/Mum/2016 in accordance with law.

14. Writ petition is accordingly allowed. However, there shall be no order as to costs.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**