

OD-17

ITAT/26/2018
IA NO: GA/2/2018(Old No.GA/401/2018)
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, KOLKATA
VERSUS
AXIS STEELS LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 24th November, 2021

Appearance :-

Mr. Tilak Mitra, Adv.
Mr. Madhu Jana, Adv.
... For Appellant
Mr. Ratnanko Banerji, Sr. Adv.
Mr. Asim Chaudhury, Adv.
Mr. Kinjal Buaria, Adv.
... For Respondent

The Court : This appeal by the revenue is filed under Section 260A of the Income Tax, 1961 (the Act, for brevity) challenging the order dated 22nd March, 2017 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No. 1288/Kol/2014 for the assessment year 2010-11. The revenue has raised the following substantial questions of law for consideration :-

- a) Whether on the facts and circumstances of the case, the Learned Tribunal erred in law in allowing short term capital loss of Rs. 3,80,00,000/- on forfeiture of shares warrant ?

- b) Whether on the facts and circumstances of the case, the Learned Tribunal erred in law in allowing carry forward of loss on forfeiture of share warrants for adjustment with future years profit ?

We have heard Mr. Tilak Mitra, learned Standing Counsel appearing for the appellant revenue and Mr. Ratnanko Banerji, learned Senior Counsel appearing for the respondent assessee.

The short issue which falls for consideration is with regard to the forfeiture of convertible warrant amounts to a transfer within the meaning of Section 2(47) of the Act as there is no extinguishment of rights namely, loss of forfeiture is allowable as a capital loss. There are several decisions on this issue and the decision placed before us on this issue, one such being in the case of Commissioner of Income Tax vs. Chand Ratan Bagri, reported in (2010)230 CTR 258 (Delhi). The operative portion of the judgment reads as follows :-

“13. More importantly, the second issue as to whether the forfeiture of the convertible warrant amounted to a transfer within the meaning of s.2(47) of the said Act has now been made clear by the Supreme Court in the case of Grace Collis (supra) as also by the Karnataka High Court in BPL Sanyo Finance Ltd. (supra). We agree with the interpretation given by the Karnataka High Court in BPL Sanyo Finance Ltd. (supra) and we see no reason to take a different view. The restrictive meaning given to the word “transfer” by the Supreme Court decision in Vania Silk Mills (P) Ltd. (supra) has been overruled by the Larger Bench of the Supreme Court in the case of Grace Collis (supra).

14. In the present case we find that the forfeiture of the convertible warrant has resulted in extinguishment of the right of the assessee to obtain a share in BLB Ltd. It is not a case where the asset itself has been extinguished or destroyed. A share in a company is nothing but a share in the ownership of the company. While the right of the assessee to share in the ownership of the company (BLB Ltd.) stands extinguished on account of the forfeiture, the company, with all its assets, continues to exist. The forfeiture only results in one less shareholder. It is not as if the ‘asset’ in which a share was being claimed was also extinguished. Thus, the second point urged by the learned counsel for the Revenue is also not tenable.”

We have heard Mr. Tilak Mitra, learned Standing Counsel appearing for the appellant revenue and Mr. Ratnanko Banerji, learned Senior Counsel, assisted by Mr. Asim Chaudhury and Mr. Kinjal Buaria, learned Advocates.

Keeping in mind the above legal principle, we examine as to whether the appellant revenue has made out a case for entertaining this appeal and whether any substantial question of law arises for consideration. The law on the issue has been well settled as noticed above. On facts we find that the Tribunal has done a thorough exercise and granted relief to the assessee. The Tribunal has committed fault as to how the Commissioner of Income Tax (Appeals) [CIT(A)] had come to conclusion that the claim lodged by the assessee is bogus and demonstrated as to how such finding is not correct. The relevant portion of the order passed by the Tribunal is as follows :-

“6. . . . Admittedly, the loss incurred by assessee which was admitted by AO but the same was rejected on the ground that

ECL has not offered to tax. Here, it is pertinent to note that what will be the tax treatment of the forfeited amount in the hands of ECL is not the concern of the AO whether it is taxable receipt or revenue receipt. The AO has to see the transactions and its effect in the hands of the assessee. Therefore, in our considered view, the tax treatment in the hands of ECL cannot be a deciding factor for the loss incurred and subsequently claimed by assessee. Therefore, the allegation framed by AO against the assessee is baseless and it was also seen that a notice was issued by the AO u/s 133(6) of the Act to ECL for the verification of loss incurred and claimed by assessee. The ECL in response thereto as clearly submitted that the original allottee was MDCPL but subsequently it was transferred to assessee. The copy of the letter is placed on page 6 and 7 of the paper book. Besides the above, ECL has duly recorded in its record the transfer of 50 lakh convertible warrants from MDCPL to assessee and the confirmation of the same is placed on pages 9 and 10 of the paper book. In view of the above, we are of the view that the impugned finding of Ld. CIT(A) that the letter has not been issued to the assessee but to MDCPL for the balance payment is not a valid reason for the impugned disallowance. Thus, after considering all the facts in totality, we are inclined to reverse the orders of authorities below. The assessee gets the relief accordingly.”

On a reading of the above finding recorded by the Tribunal, we find that the entire exercise done by the Tribunal was factually correct. That apart, we find that the substantial questions of law which has been raised before us have not been raised before the Tribunal either in the present form or in a different format. Thus, the revenue will be precluded to canvass this issue for the first time before us in this appeal. As pointed earlier, the law on the issue has been

settled in the aforementioned decision which had followed the decisions of the various other High Courts and the Tribunal after noting the legal position has examined the facts and granted relief to the assessee. Thus, we find that there is no question of law, much less substantial questions of law arising for consideration in this appeal. Accordingly, the appeal fails and is dismissed.

With the dismissal of the appeal, the connected application also is dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)