

OD-39

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

ITAT/70/2017
IA NO: GA/2/2017(Old No.GA/677/2017)
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL -1, KOLKATA
VERSUS
HINDUSTAN ENGINEERING AND INDUSTRIES LIMITED

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 22nd November, 2021

Appearance:-

Ms. Sucharita Biswas, Adv.

... For Appellant

Mr. J.P. Khaitan, Sr. Adv.

Mr. Saurabh Bagaria, Adv.

Mr. Indranil Basu, Adv.

... For Respondent

The Court : 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 16<sup>th</sup> March, 2016 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the `Tribunal') in ITA No. 330/Kol/2013 for the assessment year 2009-10.

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

1. Whether on the facts and in the circumstances of the case the Learned Tribunal erred in facts as well as in law in treating the sale of the chemical unit of the assessee company as itemised sale and not a slump sale?
2. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in deleting the addition of Rs.31,13,58,000/- made by the assessing officer under section 50B read with section 2(42C) and explanation 1 to section 2(19AA) of the Income Tax Act solely relying on the submissions made by the assessee and ignoring the facts brought on record by the assessing officer as well as the detailed observation made by the Commissioner of Income Tax (Appeals)?
3. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in treating the sale of the chemical unit of the assessee company as itemised sale without considering the case laws relied upon by the revenue in the case of CIT Versus Narkeshari Prakashan Ltd., reported in 196 ITR 438 and in the case of Accelerated Freeze Drying Co. Ltd. reported in 198 Taxmann 18 (Ker) which applies in the facts and circumstances of the instant case ?
4. Whether the impugned order is perverse, bad in law and a product of non application of judicial mind ?

The assessee filed its return of income of the assessment year 2009-2010 which was processed under Section 143 (1) of the Act. Subsequently,

the case was selected for scrutiny and notices under Section 142(1) of the Act were issued and the case was discussed with the assessee. During the year under assessment, the assessee company was engaged in activities of manufacturing and selling of chemicals, castings, steel, wagons, points and crossings, jute and petrochemicals etc. During the scrutiny assessment among other things, the assessing officer noticed that the assessee company is having various business units namely, railway wagon making unit, jute processing unit and chemical unit at Gujarat and Haldia (West Bengal). Each of these units was independent profit centres for which separate books of accounts were maintained by the assessee company. The assessing officer found that the assessee company has sold its chemical unit at Haldia to M/s. Petro Carbons and Chemicals Pvt. Ltd. and the copy of the agreement was produced. On examining the agreement, the assessing officer was of the view that the same qualified as a slump sale as defined under Section 2(42C) of the Act and accordingly, proceeded to complete the assessment by an order dated 28th December, 2011.

Aggrieved by such order the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-VI, Kolkata [CIT(A)]. It was contended that the finding of the assessing officer that the sale was a slump sale was wholly unjustified since the sale was itemised sale and cannot be treated as a slump sale within the meaning of Section 2(42C) of the Act. The assessee referred to the documents and the annexures to the documents whereunder the sale took place to justify their case. Several decisions were relied on. The CIT(A) by order dated 3rd December, 2012 did not agree with

the assessee and confirmed the finding of the assessing officer and held the sale to be slump sale. Aggrieved by such order, the assessee preferred appeal before the Tribunal. The said appeal was allowed and aggrieved by such order the revenue is before us by way of this appeal.

We have elaborately heard Ms. Sucharita Biswas, learned Standing Counsel appearing for the appellant revenue. The short question involved in the present appeal is whether the sale effected by the assessee during the year under consideration was a slump sale within the meaning of Section 2(42C) of the Act. The learned Standing Counsel for the revenue would contend that the assessee miserably failed to produce any document before the assessing officer to establish that the sale was not a slump sale or rather the sale was an itemised sale and in such circumstances the Tribunal committed an error in taking note of the conduct of the assessee both before the assessing officer as well as before the CIT(A).

Therefore, it is submitted that this Court while exercising jurisdiction under Section 260A of the Act is entitled to consider whether there is any error committed by the Tribunal, more particularly a factual error warranting interference by this Court. At the first blush the submission of the learned Standing Counsel appears to be attractive but on a close scrutiny we find that the authorities as well as the Tribunal have examined the documents which were made available before it. The Tribunal after going through the documents, more particularly the agreement and the addendum to the agreement and Annexure J found that the unit itself was never sold and/or transferred as a going concern in toto but only assets of

the unit was sold and transferred to the purchaser on a pre-determined and agreed price for each type of assets being sold and transferred and the consideration fixed for all the assets were not in lump sum. After noting the factual position, the Tribunal has taken note of Section 2(42C) and held that the assessee entered into a memorandum dated 25th October, 2007 followed by an addendum to the memorandum for sale of some of the assets of the chemical unit at a pre-determined sale price for selling some of the assets belonging to the chemical unit at Haldia. Furthermore, the Tribunal found from the memorandum as well as the addendum that the individual assets were determined and fixed at a pre-determined and agreed value and such price has been received by the assessee by different account payee cheques during the previous year relevant to the assessment year 2009-10. Further, on perusal of the balance-sheet, the Tribunal found that on the date of transfer apart from the assets which were sold and transferred, the said chemical unit had several other assets which were never sold nor transferred to the purchaser. Furthermore, the Tribunal took note of the crucial fact that none of the liabilities were transferred to the purchaser and the same continued to be a liability of the assessee and to be discharged and were discharged by the assessee.

Therefore, the Tribunal in our view, rightly held that the sale cannot be regarded as a slump sale. The Tribunal took note of the decision of this Court in the case of *Kwality Ice Cream (India) Ltd. versus CIT* reported at (2011)336 ITR 100 in which it was held that though the sale of the undertaking was for a lump sum consideration, Section 50 of the Act in

respect of depreciable assets will override all other provisions and for depreciable assets, the value has to be determined in accordance with the principles of block of assets, read with Section 43(6) of the Act. There are other decisions which were also noticed and referred to by the Tribunal. Thus, we find that the Tribunal has not committed any error of fact calling for an interference by this Court.

Learned Standing Counsel for the appellant revenue placed reliance on the decision of the Hon'ble Supreme Court reported in AIR 1976 SC 163 (Afsar Shaikh and Another Versus Soleman Bibi and Others). This decision has been pressed into service for the proposition regarding the scope of the power of the High Court under Section 100 of the CPC and as to how the High Court shall proceed while exercising such power. The learned Standing Counsel would submit that if the Tribunal has not determined the issue of fact properly or it has determined the issue wrongly by reason of any omission or error or defect then this Court in an appeal under Section 260A of the Act would be entitled to interfere.

In the preceding paragraphs we have pointed out the factual position which has been taken note by the Tribunal. We find that there is no erroneous approach by the Tribunal nor can it be said that the Tribunal has not determined the issue of fact nor can it be said that the issue has been determined wrongly by reason of any illegality or omission or error for us to interfere under Section 260A of the Act.

It is pointed out by Mr. J.P. Khaitan, learned Senior Counsel appearing for the respondent assessee that the Tribunal referred to a

decision of Tribunal of Kolkata Bench in the case of DCIT versus Tongani Tea Co. Ltd. in ITA No.1233/Kol/2008 for assessment year 2000-1 dated 6th November, 2015. It is submitted that the revenue carried the matter by way of an appeal before this Court in ITA No. 203 of 2016, which was dismissed by judgment and order dated 29th June, 2018.

Thus, for the above reasons, we find no merit in this appeal and accordingly the appeal is dismissed and the substantial questions of law are answered against the revenue.

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

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)