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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income tax)
ORIGINAL SIDE

ITAT 62 of 2018
IA No.GA 1 of 2018 (Old No.GA 1623 of 2018)

BHAG CHAND CHHABRA, A HINDU UNDIVIDED FAMILY
-Versus-
PRINCIPAL COMMISSIONER OF INCOME TAX-12

BEFORE:

The Hon'ble JUSTICE T. S. SIVAGNANAM

AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 11th November, 2021.

Appearance:
Mr. Pratyush Jhunjhunwala, Adv.
Mr. P. Sharma, Adv.
...for the appellant.

The Court: This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act, in brevity). The appeal is directed against the order dated 31.10.2017 passed by the Income Tax Appellate Tribunal, "SMC" Bench, Kolkata in ITA No.652/Kol/2017 for the assessment year 2013-14. The assessee has raised the following substantial questions of law for consideration:

1. Whether the Tribunal was justified in law in upholding the addition made under section 68 of the Income Tax Act, 1961 of the income from purchase and sale of commodities which has been offered to tax and conducted through banking channels and through a registered broker because the stock exchange was unable to

confirm the transaction and the broker's registration was cancelled after the transactions of the petitioner?

2. Whether a sum which has been disclosed as income be again subjected to tax under section 68 read with section 115BBE of the Income Tax Act, 1961?
3. Whether the order of the Tribunal dated October 31, 2017 is otherwise erroneous and perverse?

We have heard Mr. Jhunjhunwala, learned counsel appearing for the appellant assessee. The facts which are necessary for the disposal of this appeal are as hereunder.

The assessee, a Hindu undivided family filed his return of income for the assessment year under consideration (AY 2013-14) declaring a total income of Rs.2,12,920/-. In the said return speculation profit of Rs.3,00,805/- claimed to be earned through broker, M/s. Jagtarni Commodities Pvt. Limited from the transactions made in National Multi-Commodity Exchange of India Limited (NMCE) was shown by the assessee under the head 'income from business and profession'. The Assessing Officer with a view to verify the correctness of the said claim issued notice under Section 133(6) of the Act to the said broker as well as to the Exchange. In response to such notice, NMCE vide letter dated 29.12.2015 brought to the notice of the Assessing Officer that the assessee was never registered with the Exchange by the said broker and the said broker was never active on the Exchange. The notice which was issued to the broker remained uncomplied. The assessee was called upon to offer explanation

and produce evidence to prove the genuineness of his claim of speculation profit. The Assessing Officer found that such opportunity was not utilized by the assessee to establish the genuineness of the speculation profit. Therefore, the Assessing Officer treated the said amount as unexplained cash credit under Section 68 of the Act in the hands of the assessee and completed the assessment. Aggrieved by the same, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-10, Kolkata (CITA). The CITA by order dated 22.02.2017 dismissed the appeal. Aggrieved by the same, the assessee approached the Tribunal which, by the impugned order, had dismissed the assessee's appeal. This is how the assessee is before us by way of this appeal.

After elaborately hearing the learned counsel for the appellant assessee, we find that the matter is fully factual. The Assessing Officer as well as the CITA and the Tribunal have appreciated and re-appreciated the factual position. The Tribunal in no uncertain terms has clearly discussed the factual issue as well as the pivotal point raised by the assessee that the transaction done by the assessee with the broker was prior to his cancellation of the registration with the Stock Exchange.

The following finding returned by the Tribunal under paragraph 8 would be germane:

“The genuineness of the Contract Notes issued by the said broker even prior to 15.05.2013 thus was found to be doubtful and the letter issued by NMCE stating that he was never active on the Exchange further corroborated the same. In support of

the assessee's case, ld. Counsel for the assessee has relied on the decisions of the Hon'ble Calcutta High Court in the case of Cargo Industrial Holdings Limited (supra) and in the case of Emerald Commercial Limited (supra) as well as the decision of this Tribunal in case of Rahul (supra). As rightly contended by the ld. D.R., these cases cited by the ld. Counsel for the assessee, however, are distinguishable on facts, inasmuch as, there was no enquiry made by the Assessing Officer in the said case directly with the concerned Stock Exchange which clearly revealed that the relevant transactions were not done through the Stock Exchange as claimed by the assessee on the basis of Contract Notes issued by the broker. In the present case, such enquiry was made by the Assessing Officer, which clearly revealed that not only the assessee but even the concerned broker was never active on the Stock Exchange. It also revealed that the said broker was indulging in issuing fraudulent Contract Notes which resulted into his expulsion from the membership of the Exchange from 15th May, 2013."

The endeavour of learned counsel for the appellant is to convince us that the transaction done by the assessee was through banking channels and it was done well much prior to 15.05.2013 on which date the membership of the broker was cancelled. In fact, this issue was considered not only by the Tribunal as well as by CITA and the factual finding has been recorded as to how the genuineness has not been established. Thus, we

find that there is no error in the decision making process nor in the decision rendered by the Tribunal and we find no substantial questions of law arisen for consideration in this appeal.

For such reasons, the appeal fails and the same is dismissed and the connected application is also dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/s.pal.