

OD-59

ITAT/214/2017

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

PRINCIPAL COMMISSIONER OF INCOME
TAX, KOLKATA-2

-Versus-

M/S. KHAITAN CONSULTANTS LIMITED

Appearance:

*Mr. P. K. Bhowmick, Adv.
...for the appellant.*

*Mr. J. P. Khaitan, Sr. Adv.
Mr. Akhilesh Kumar Gupta, Adv.
Mr. Asim Chaudhury, Adv.
Ms. Aesa Dey, Adv.
...for the respondent.*

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 16th November, 2021.

The Court : This appeal of revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 8th July, 2016 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata (the 'Tribunal') in ITA No.2796/Kol/2013 for the assessment year 2010-11.

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

"(a) *Whether on the facts and in the circumstances of the case, the Learned Income Tax*

Appellate Tribunal, "B" Bench erred in law in holding that the total consideration for sale of shares was Rs.10,40,09,705/- only, ignoring the fact that it was specifically and clearly mentioned in the agreement for sale entered into by the assessee that the lump sum sale consideration for the 99.97% of the share capital held by the assessee in KCCL was a sum of Rs.15,37,35,633/- ?

(b) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal, "B" Bench erred in law in holding brokerage charges as expenditure of the assessee on account of sale of shares, ignoring the fact that the brokerage was in essence raised on sale of property not in name of the assessee but in the name of the subsidiary company and was not raised on sale of shares ?"

The short question involved in this appeal by the revenue is whether the assessee had received a sum of Rs.15,97,25,928/- as sale consideration for sale of the shares in question or whether the assessee received only Rs.10,40,09,705/- as sale consideration. This issue arose before the assessing officer who called upon the assessee to explain as to why only in the Return of income they had reflected the sale consideration for the sale of shares only as Rs.10,40,09,705/- and not as Rs.15,37,35,633/- as mentioned in the share purchase agreement dated 29th January, 2010. The assessee's explanation was that Rs.4,97,25,928/- was towards repayment of a loan and the said amount was not received by the assessee towards sale consideration for sale of shares and

the sum received by them was only Rs.10,40,09,705/-. This explanation was found to be not acceptable by the assessing officer who completed the assessment by order dated 14th March, 2013. The assessee challenged the same by filing an appeal before the Commissioner of Income Tax (Appeals) IV, Kolkata (CIT(A) in brevity). The CIT(A) considered the facts of the case and more particularly, clause 2 of the agreement in its entirety which consists of various sub-clauses namely Clauses 2.1, 2.2, 2.2.1, 2.2.2, 2.2.3 and 2.2.4. After noting the facts, the CIT(A) recorded a finding that the assessee had received only a sum of Rs.10,40,09,705/- as sale consideration for sale of shares. The CIT(A) referred to the decision of the Hon'ble Supreme Court in the case of *Commissioner of Income Tax vs. Hooghly Mills Company Limited* (287 ITR 333). The revenue carried the matter in appeal to the Tribunal. The Tribunal re-appreciated the facts, more particularly clause 2 of the agreement in its entirety and held that the purchasers of shares took over the liability of the assessee and acknowledged the purchasers as creditors in so far as the sum of Rs.4,97,25,928/- is concerned. Further, the Tribunal stated that there is nothing available on record to show that the said amount was received by the assessee as sale consideration towards the sale of shares and, therefore, the same cannot be attributed to consideration for sale of the shares.

We note that the CIT(A) as well as the Tribunal rightly appreciated the agreement between the parties by considering the clause 2 in its entirety wherein under clause 2.2.3, the sum payable towards the loan has been specifically mentioned. However, the assessing officer failed to read the agreement as a whole and proceeded to reject the case of the assessee, particularly by referring to clause 2.1 of the agreement. Thus, we find that the approach of the CIT(A) and the Tribunal was proper and the ultimate decision arrived at by the CIT(A) and the Tribunal does not call for any interference.

Thus, we find that there is no question of law as well as substantial question of law arising for consideration in this appeal. Accordingly, the appeal is dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)