

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

ITAT/37/2018

PRINCIPAL COMMISSIONER OF INCOME TAX KOLKATA – 2,
KOLKATA

VS.

M/S. K.B. CAPITAL MARKETS PVT. LIMITED

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : February 15, 2022.

[Via Video Conference]

Appearance :

Mr. Debasish Chowdhury, Adv.
... for the appellant

Mr. R.K. Murarka, Sr. Adv.
Ms. Sutapa Roy Choudhury, Adv.
Ms. Aratrika Roy, Adv.
... for the respondent

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 3rd May, 2017 passed by the Income Tax Appellate Tribunal, “B” Bench, Kolkata (Tribunal) in ITA No.1302/Kol/2014 for the assessment year 2009-10.

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 Kolkata, erred in law in holding that income of brokerage from dealing in shares in client account were to be allowed to the set off against speculation loss treated under Section 73 of the Income Tax Act, 1961 of Rs.5,12,35,594/- without considering the fact that speculation loss can only be set off against speculation profit?
- b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, “B” Bench Kolkata, erred in law in holding that the profit out of sale of shares to be treated as Long Term Capital Gain of Rs.97,51,280/- Short Term Capital Gain of Rs.1,48,40,879/- instead of normal business income without considering the fact that frequency of transaction, non-maintenance of separate demat account of investment and for trading suggests that sale of shares are normal business income in nature?
- c) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, “B” Bench Kolkata, erred in law in holding that the disallowance of interest expenditure ought to have

been made under Rule 8D(2)(ii) of the Income Tax Rules, 1962?

- d) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, “B” Bench Kolkata, erred in law in holding that only dividend yielding investment are to be taken into account while calculating the disallowance under Section 14A of the Income Tax Act, 1961 and the disallowance made of total Rs.59,30,273/- was not correct, without considering the fact that as per provision of Rule 8D of the Income Tax Rules, 1962 all the investments as well stock in trade are to be considered for computing disallowance?

We have heard Mr. Debasish Chowdhury, learned counsel for the appellant/revenue and Mr. R. K. Murarka, learned senior counsel, duly assisted by Ms. Sutapa Roy Choudhury and Ms. Aratrika Roy, learned counsel appearing for the respondent/assessee.

Learned senior counsel appearing for the respondent/assessee submitted that the tax effect for the assessment year under consideration is below the threshold limit fixed by the CBDT Circular. In this regard, our attention was drawn to the Income Tax Computation Form appended to the assessment order from which we find that the total income computed is Rs. 1,04,65,829/- and the tax payable thereon in terms of the order of the assessing officer is nearly

Rs. 35 lacs. Therefore, the appeal cannot be pursued by the revenue on the ground of low tax effect.

Accordingly, the appeal stands dismissed.

Consequently, substantial questions of law are left open.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)