OD-19

ITAT/42/2018
IA No.GA/2/2018 (Old No.GA/534/2018)

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

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-2, KOLKATA

-Versus-

K.B. CAPITAL MARKETS PVT. LTD.

Appearance:
Mr. Tilak Mitra, Adv.
Mr. Manabendranath Bandopadhyay, Adv.
...for the appellant.

Mr. R. K. Murarka, Adv.
Ms. Sutapa Roychowdhury, Adv.
...for the respondents.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 15th February, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 3rd May, 2017 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (in short the 'Tribunal') in ITA No.1303/Kol/2014 for the assessment year 2010-11.

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

"I) 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 determined for the Assessment Year 2009-10 without considering the fact that speculation loss can only be set off against speculation profit ?"*

We have heard Mr. Tilak Mitra, learned Counsel assisted by Mr. Manabendranath Bandopadhyay, learned Advocate for the appellant/revenue and Mr. R.K. Murarka, leaned Counsel assisted by Ms. Sutapa Roychowdhury, leaned Advocate for the respondent/assessee.

The learned counsel appearing for the respondent/assessee submits that the appeal cannot be pursued by the revenue as the tax effect would be less than Rs.1 crore. In order to demonstrate as to how the tax effect is less than Rs.1 crore, a calculation sheet has been handed over to us wherein it is stated that assuming this appeal is allowed and the assessment order is restored, the tax effect will be only Rs.62,11,401/- and, according to the Circular dated 8th August, 2019 issued by the Central Board of Direct Taxes (CBDT), revenue cannot pursue this appeal. The learned counsel for the respondent/assessee has also drawn our attention to the order giving effect to the order under Section 250 of the Act dated 31st October, 2014 and it is demonstrated that assuming this appeal is allowed in favour of the revenue, the tax effect will be Rs.62,54,160/-. The learned counsel for the respondent has handed over a letter sent by the

Deputy Commissioner of Income Tax, Circle-4(1), Kolkata to the Principal Commissioner of Income Tax, Kolkata-2, dated 15th September, 2021, in the subject column of the said letter, the case number has been mentioned as ITAT/35/2017 whereas the appeal before us is ITAT/42/2018 though the assessee appears to be the same company. The total disputed tax, according to the said communication, is Rs.1,67,18,489/- (approximately). Thus, there are two versions before us. Hence, we peruse the order passed by the Commissioner of Income Tax (Appeals)-VI, Kolkata (CIT(A) dated 28th March, 2014. In the said appeal, the tax demanded has been mentioned as Rs.89,88,840/-. The assessee was successful before the CIT(A) which order has been affirmed by the tribunal. Therefore, assuming this appeal is allowed in favour of the revenue, the tax effect cannot be more than Rs.89,88,840/-.

Therefore, this appeal cannot be pursued by the revenue on the ground of low tax effect. Accordingly, the appeal stands dismissed and the substantial question of law is left open.

Consequently, the application for stay also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.DasA/s.