

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

ITAT/49/2021
IA NO. GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS.
M/S. SHETH COMMERCIAL CO.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : AUGUST 08, 2022

Appearance :
Mr. Prithu Dudhoria, Adv.
....for appellant
Mr. Pratyush Jhunhunwala, Adv.
Mr. Varun Kedia, Adv.
...for respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated April 16, 2019 in I.T.A. No.1406/Kol/2017 for the assessment year 2012-13. The revenue has framed the following substantial questions of law for consideration: -

- a) Whether the ITAT was correct in law and in facts in quashing the order under Section 263 of the Income Tax Act, 1961 holding that it was not a case of no enquiry or inadequate enquiry by the assessing

officer (as made clear by the Principal CIT) when, in fact, the Principal CIT clearly held that the assessment order was passed without making relevant enquiry or verification regarding the foreign exchange loss of Rs.35,59,347/- and loss on dealings in commodities of Rs.60,98,446/-?

- b) Whether the ITAT was erred in law in not upholding the order of the Principal CIT when no enquiry was conducted in respect of the claim of foreign exchange loss and loss on dealing commodities rendering the assessment order erroneous in so far as it is prejudicial to the interest of the revenue ?

We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant/revenue and Mr. Pratyush Jhunjunwala, learned Counsel appearing for the respondent/assessee.

The short issue which falls for consideration in the instant case is whether the assessment completed under Section 143(3) vide order dated 23.3.2015 and subsequently under Section 147/143(3) of Act dated 6.7.2016 could be stated to be erroneous and prejudicial to the interest of the revenue.

On perusing the assessment order dated 23rd March, 2015, in paragraph 2 therein the Assessing Officer has stated that the assessee earned his income from export and they are also exporter of jute and jute products, hedging in US Dollar commodities etc. The details produced by the assessee were examined.

The assessment was reopened under Section 147 of the Act but the same does not pertain to the issues canvassed before us. There was an audit objection raised on 8th July, 2015 and based on the same the Principal Commissioner of Income Tax – 14 exercised his powers under Section 263 of the Act and after issuing show cause notice to the assessee and receiving their reply, by order dated 20th March, 2017 held that the assessment order under Section 144(3), dated 23rd March, 2015 for the assessment year under consideration is erroneous in so far as it is prejudicial to the interest of the revenue.

Aggrieved by the same, the assessee preferred appeal before the Tribunal. The Tribunal has noted the averments set out in the show cause notice issued by the Commissioner on 15th February, 2017, the reply given by the assessee dated 8th March, 2017. In fact, the entire reply has been extracted verbatim. Thereafter, the Tribunal proceeds to take note of the decision of the Hon'ble Supreme Court in *Malabar Industrial Co. (P) Ltd. vs. CIT*, (2000) 243 ITR 83(SC) and the decision in *CIT vs. Quality Steel Suppliers Complex*, (2017) 395 ITR 1 (SC) and notes the legal position, set out all those decisions and has ultimately held that the re-assessment cannot be stated to be erroneous causing prejudice to the interest of the revenue.

The revenue being aggrieved by such order is on appeal before us. It is submitted by the learned standing Counsel that the Assessing Officer while completing the assessment vide order dated 23rd March, 2015 has not discussed any of the issues which has been raised in this appeal and the Tribunal has also

not dealt with the factual matrix. Therefore, it is submitted that the order passed by the Tribunal is erroneous.

The learned Counsel appearing for the respondent/assessee submitted that specific query was raised during the scrutiny assessment and a paper book was filed before the Assessing Officer containing all documents to justify their stand and after perusing the same and noting the details in those documents the Assessing Officer was satisfied. Therefore, it is submitted that it cannot be stated that no enquiry was conducted. In support of his contention, the learned Counsel places reliance on the decision in the case of *Commissioner of Income Tax, Chennai vs. Celebrity Fashion Ltd.*, (2020) 119 taxmann.com 426(Madras). In the said decision, the Court noted the decision of the Bombay High Court in the case of *CIT vs. Badridas Gauridu (P.) Ltd.*, (2003) 261 ITR 256 (Bom.), wherein the assessee was not a dealer in foreign exchange but was an exporter of cotton. The assessee therein booked foreign exchange contracts which were held to be only incidental to the assessee's regular course of business testing the correctness of the order of the Tribunal which held that the transaction was not speculative transaction but was held as follows :-

“3. The assessee was not a dealer in foreign exchange. The assessee was a cotton exporter. The assessee was an export house. Therefore, foreign exchange contracts were booked only as incidental to the assessee's regular course of business. The Tribunal has recorded a categorical finding to this effect in its order. The Assessing Officer has not considered these facts. Under section 43(5) of the Income-tax Act, “speculative

transaction” has been defined to mean a transaction in which a contract for the purchase or sale of a commodity is settled otherwise than by the actual delivery or transfer of such commodity. However, as stated above, the assessee was not a dealer in foreign exchange. The assessee was an exporter of cotton. In order to hedge against losses, the assessee had booked foreign exchange in the forward market with the bank. However, the export contracts entered into by the assessee for export of cotton in some cases failed. In the circumstances, the assessee was entitled to claim deduction in respect of Rs.13.50 lakhs as a business loss. This matter is squarely covered by the judgment of the Calcutta High Court with which we agree, in the case of CIT v. Sooraj Mull Nagarmull [1981] 129 ITR 1691].”

It is submitted by the learned Counsel appearing for the respondent the facts of the present case also are similar to the facts as noted in Celebrity Fashion Ltd. and the modus adopted by the assessee is a normal business model and all these facts were placed before the Assessing Officer who was satisfied with the nature of transaction and accepted the case of the assessee. Though it may be true that there were voluminous materials and documents placed before the Assessing Officer, there is no mention about such documents. In any event, if the Assessing Officer is satisfied with the case of the assessee pursuant to a query raised during the discussion, it is always advisable to record at least the reasons so that if the order is to be examined by a higher authority, they will be in a

position to understand as to on what basis the assessee was granted relief. Admittedly, the Assessing Officer did not spell out any reasons.

We are conscious of the fact that the Assessing Officer is not expected to write a judgment but since reasons are essential when a quasi-judicial or administrative authority takes a decision, the same cannot be dispensed with. Be that as it may, we note the submission of the learned Counsel for the respondent that the material which was placed before the Assessing Officer was placed before the Tribunal and the Tribunal was also satisfied that enquiry was conducted by the Assessing Officer. Though such a submission has been made, we find that the Tribunal has not mentioned anything about documents which were produced by the assessee during the hearing. All that the Tribunal has done is to note the legal position. After having noted the legal position a discussion should have been made on the factual position. Since that has not been done, we are of the view that the matter needs to be remitted back to the Tribunal for fresh consideration.

For the above reasons alone, the appeal is allowed.

The order passed by the Tribunal is set aside and the matter is remanded to the Tribunal to give a fresh hearing to the respondent assessee, peruse the documents which were placed in the form of paper book and thereafter proceed to pass a reasoned order on merits and in accordance with law.

Consequently, the substantial questions of law are left open.

The stay application stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)