

OD-34

ITA/107/2004

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

C. E. S. C. LTD.

-Versus-

COMMISSIONER OF INCOME TAX,
KOLKATA-II

Appearance:

Mr. J. P. Khaitan, Sr. Adv.
Ms. Nilanjana Banerjee Pal, Adv.
...for the appellant.

Mr. Smarajit Roychowdhury, Adv.
Mr. Asok Bhowmick, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 14th February, 2022.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the consolidated order dated 29th October, 2003 passed by the Income Tax Appellate Tribunal, "E" Bench, Kolkata (in short the 'Tribunal') in ITA No.1872(Kol) of 2002 for the assessment year 1994-95.

The appeal was admitted to decide the following substantial question of law:

- I) *Whether having regard to the settled legal proposition and having regard to the fact that the profits of the entire business and the sale proceeds were all deposited in the mixed overdraft account, the finding of the Tribunal that the sum by which the shares were purchased or the investments were made, came out of the overdraft and not out of the profits deposited with the mixed overdraft account is unreasonable and perverse and without any material or evidence whatsoever ?*
- II) *Whether the Tribunal was justified in upholding the action of the Assessing Officer in thrusting upon depreciation allowance of Rs.65,69,72,275/- on the petitioner ignoring the petitioner's claim to withdraw the depreciation made vide its letter dated 18.2.`1997 in the course of assessment proceedings, only on the ground that no revised return was filed under section 139(5) withdrawing the claim of depreciation and in doing so whether justified in failing to take into consideration the ratio of decisions of the Hon'ble Supreme Court and jurisdictional High Court ?"*

We have heard Mr. J.P. Khaitan, learned senior counsel assisted by Ms. Nilanjana Banerjee Pal, learned Advocate for the appellant/assessee and Mr. Smarajit Roychowdhury, learned Counsel for the respondent/revenue.

Learned senior counsel for the appellant, on instruction, submitted that though two substantial questions of law were admitted by this Court by order dated 24th June, 2004, he has been instructed by the learned counsel on record not to press the substantial question of law no.2. Accordingly, the substantial question of law no.2 is not pressed and the question is left upon.

The substantial question no.1 is with regard to the investments made in a subsidiary company and the manner in which the assessing officer treated those investments. Identical question arose for consideration in the assessee's own case for the assessment years 1992-93 and 1993-94 which were also considered by the tribunal by the consolidated order dated 29th October, 2003 which is impugned before us for the assessment year 1994-95. For the assessment year 1994-95, the assessee carried the matter in appeal before this Court in ITA No.107 of 2004 and by judgment dated 26th November, 2014 the appeal was allowed. The same judgment was followed in the assessee's own case for the assessment year 1993-94. Thus, we find that there is no distinguishing factor in the case on hand for not applying the decisions of this Court rendered for the earlier assessment years which also challenged the very same impugned order.

Thus, following the above decision, the appeal filed by the assessee is allowed and the substantial question of law is answered in favour of the assessee.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)