

Form No. (J2)

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

P R E S E N T:

THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

ITAT/166/2018
IA NO. GA/2/2018 (OLD NO. GA/1207/2018)

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL -1,
KOLKATA
VS.
M/S INLAND ROAD TRANSPORT LTD.

For the appellant : Mr. Smarajit Roychowdhury, Adv.
Mr. Arunava Ganguly, Adv.

For the respondent : Mr. J.P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Siddharth Das, Adv.

Heard on : 21st February, 2022.

Judgment on : 21st February, 2022.

T.S. SIVAGNANAM, J. : This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the composite order dated 29.06.2016 passed by the Income Tax Appellate Tribunal "B" Bench Kolkata (Tribunal) in ITA No. 1179/Kol/2012, ITA No. 1225 & 1226/Kol/2012, ITA No. 1426 &

1427/Kol/2012, ITA No. 1480 & 1481/Kol/2012 for the assessment years 2004-05 to 2010-11.

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

1. *Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in not accepting the contention of the Assessing Officer as to the authenticity of the books of accounts produced by the assessee in the course of search and survey operations who rejected the contention of the assessee that the records were destroyed by fire and that the whole of the contents of the books of accounts were audited by the authorised representative cum auditor of the assessee?*
2. *Whether on the fact and the circumstances of the case, the Learned Tribunal erred in law in not concurring with the findings of the Assessing Officer rejecting the books of accounts of the assessee on not being satisfied with the correctness or completeness of the accounts of the assessee and resorted to estimation of profits of the business of the assessee under section 145 (3) of the Income Tax Act?*
3. *Whether on the fact and the circumstances of the case the Learned Tribunal erred in law in relying on the retracted statement of the authorised representative of the company and not accepting the initial statement made by him admitting the inflation of expenses on account of lorry hire charges paid and totally ignoring the judicial pronouncements on the issue that retraction can only be valid if the earlier statement is proved to be made under duress or coercion?*
4. *Whether on the fact and the circumstances of the case the Learned Tribunal erred in law in deleting the*

addition of Rs.68,50,000/- on account of unsecured loans on the basis of the retraction made by the authorised representative of the assessee at a much later stage which has no value at all in the eye of law?

5. *Whether the Hon'ble Tribunal erred in Law in deleting the addition toward immovable property overlooking the fact that loan paper or any supporting documents were not produced during the assessment which may relate the loan or advances to the payment toward immovable property?*
6. *Whether the Hon'ble ITAT erred in law in setting aside the addition made on account of cash payment noted in seized document ILRT-I and ILRT-2 for deciding this issue afresh without appreciating the facts discussed in the assessment order that there was no material on record to suggest the actual nature of the utilization of cash and whereas assessee failed in establishing that the cash payments were actually came from the regular cash book as clearly discussed in assessment order?*

We have heard Mr. Smarajit Roychowdhury, learned standing counsel duly assisted by Mr. Arunava Ganguly, learned advocate for the appellant/revenue and J.P. Khaitan, learned senior counsel assisted by Mr. Pratyush Jhunjunwal and Mr. Siddharth Das, learned advocate for the respondent/assessee.

The substantial questions of law no. 1 to 3 arises for all the assessment years 2004-05 to 2010-11. Substantial question of law no. 4 is for the assessment year 2007-08 and substantial question of law no. 5 is for the assessment year 2010-11 and substantial question of

law no. 6 pertains to the assessment year 2008-09, 2009-10 and 2010-11.

So far as the question no. 6 is concerned, the Tribunal had remanded the matter to the assessing officer for fresh consideration and the assessing officer by order dated 19th September, 2017 has verified the books of accounts and deleted the entire deduction. Therefore, question no. 6 as suggested does not arise for consideration and stands rejected.

With regard to substantial question nos. 1 to 3, which are common for all the assessment years, namely 2004-05 to 2010-11, we have noted the findings recorded by the Tribunal. In fact the Tribunal has done a thorough factual exercise while considering the correctness of the order passed by the CIT(A), which had allowed the appeal filed by the assessee. The Tribunal on noting the facts found that in the course of search which commenced on November 5, 2009, the survey team had seized electronic data and other records. However, there was no finding that any entry therein was false or fabricated. Further the CIT(A) had set aside the findings of the assessing officer which had disbelieved the fire accident which took place in the office premises of the assessee at Strand Bank Road, Kolkata. Noting the facts, the Tribunal found that the assessee was able to substantiate with official records to show that there was a fire accident in the said premises which had destroyed the records. The learned department representative who appeared before the Tribunal could not controvert the said fact. Apart from that the other factual

findings rendered by the CIT(A) were also considered and approved by the Tribunal. Thus we find there is no question of law much less substantial question of law arising on these issues, which have been raised in question Nos. 1 to 3. Accordingly, the same stand rejected.

With regard to substantial question no. 4 is concerned which arises for the assessment year 2007-08, the Tribunal after considering the factual submissions made by the assessee has verified the correctness of the finding rendered by the CIT(A) and held that the department could not controvert any of the facts which were recorded by the CIT(A) while allowing the assessee's appeal. Thus, we find there is no question of law arising for consideration on this issue as well and the same stands rejected.

With regard to substantial question no. 5 is concerned which arises for the assessment year 2010-2011, the Tribunal found that the payments made during the financial year 2006-07 and in the subsequent years were all through banking channel and reflected in the balance sheet for the assessment year 2007-08 and subsequent years. Further the investment was financed to the extent of Rs.1.15 crore by ICICI Bank which was explained at the assessment stage. Furthermore, the total investment made by the assessee was also found to be recorded in the books of accounts. These factual findings which were recorded by the CIT(A) could not be controverted by the department when the appeal was heard by the Tribunal. Thus, we find no substantial question of law arising for consideration on this issue as well.

In the result, the appeal filed by the revenue is dismissed on the ground that no substantial question of law arises for consideration.

Connected application also stands dismissed.

(T. S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)