

Form No.[J2]

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

PRESENT:

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

**ITAT/192/2018
IA NO:GA/2/2018[OLD NO:GA/1453/2018]**

**PRINCIPAL COMMISSIONER OF INCOME TAX-4, KOLKATA
VS.
AACHMAN VANIJYA PVT. LTD.**

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For the appellant: Mr. Tilak Mitra, Adv.,

For the respondent: None appears.

Heard on : January 24, 2022.

Judgement on : January 24, 2022.

T.S. SIVAGNANAM, J. : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961, (the Act, in brevity) is directed against the order dated 4.8.2017 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (Tribunal) in ITA/1248/Kol/2016 for the assessment year 2011-12. The revenue has raised the following substantial questions of law for our consideration.

- a. Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law or in fact in quashing the order under Section 263 of the Income Tax Act, 1961 passed by the Commissioner of Income Tax-4, Kolkata in the facts and circumstances of the case while passing the order dated 23rd January, 2014 under Section 143(3) of the Income Tax Act, 1961, there was clear non application of mind in the said order passed by the assessing officer?
- b. Whether on the facts and in the circumstances of the case, the Learned Tribunal has erred in law or in fact in quashing the order of the Commissioner of Income Tax-4, Kolkata in spite of the assessing officer having not passed a speaking order?

We have heard Mr. Tilak Mitra, learned senior standing counsel for the appellant and carefully perused the materials placed on record. The short question involved in this appeal is whether the assumption of jurisdiction by the Commissioner of Income Tax under Section 263 of the Act was justified or not. We have perused the order of assessment dated 23.1.2014 under section 143|(3) of the Act. From the said order we find that the assessee was put on notice by the assessing officer under Sections 143(2) and 143(1) along with questioners. The assessing officer has recorded that the case was discussed with the authorised representative of the assessee and the assessee has produced the necessary documents as called for,

namely, ledger, cash book, brokers contract notes, purchase and sales register, loan confirmations, bank statement, etc. Thereafter the assessing officer has checked those evidences and also considered the reply received to the notice issued under Section 133(6) of the Act and then proceeded to complete the assessment. The Commissioner while issuing notice under Section 263 of the Act has culled out some materials from the records and was of the opinion that the loss in share credit account was contingent in nature and not allowable. With regard to loss on account of derivative segment, the Commissioner was of the opinion that it is a speculation loss and cannot be set off against other source of income. The assessee submitted a reply to the show cause notice on 29.3.2016. The said reply has not been annexed to the case papers but we find from the order passed by the Commissioner dated 31.3.2016 one paragraph of the reply/written submission has been extracted. On a perusal of the stand taken by the assessee it is seen that in the case of closing stock of shares of the company the valuation was done on the basis of accounting standard and this has been the consistent method applied by the assessee company year after year. The assessee further contended that any loss arising on account of such valuation method followed consistently year after year is allowable business loss as per the provisions of the Act. Further, it is not a contingent or notional loss since this will again become opening stock for the next year thereafter nullifying the impact as the debit or expenditure side will be of reduced amount in the next year. The assessee placed reliance on CBDT instruction

no.03/2010 dated 23.3.2010 stating that the same applies to foreign exchange derivative transaction and not to delivery based trading business assets like closing stock of tangible items. The Commissioner in his order dated 31.3.2016 has not extracted the remaining portion of the written submission of the assessee. However, we find that the Commissioner has not given any reasons as to why the submission made by the assessee is not accepted. The Commissioner merely directed the assessing officer to verify and examine the issues, which was pointed out by him in the show cause notice. Aggrieved by such order the assessee filed appeal before the Tribunal and reiterated the factual position, more particularly that the practice followed by the assessee has been a consistent practice accepted by the department. Further reliance was also placed on CBDT instruction no.03/2010. That apart, the assessee contended that all materials were available with the assessing officer and documents were placed before him and there is absolutely no justification to invoke the powers under Section 263 of the Act. The Tribunal examined the notice took note of the contentions advanced by the assessee on the merits and were fully satisfied that the assessing officer has considered all the books and documents placed before him and thereafter completed the assessment. That apart, the Tribunal also noted that the same has been the consistent practice of the assessee. With this finding of fact the Tribunal held that there was absolutely no justification for invoking the power under Section 263 of the Act and the twin tests required to be attracted for invoking the power under Section 263 was

also conspicuously absent. Thus, we are of the clear view that the Tribunal was right in granting relief to the assessee and the order does not call for any interference. In the result, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue. The stay petition, IA NO:GA/2/2018[OLD NO:GA/1453/2018] also stands dismissed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)