

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

ITAT/174/2021
IA No.GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
M/S. THE PEERLESS GENERAL FINANCE & INVESTMENT CO. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 12th September, 2022

Appearance :
Mr. Soumen Bhattacharjee, Adv.
....for appellant

Mr. Abhijit Chatterjee, Sr. Adv.
Mr. Gopal Ram Sharma, Adv.
...for respondent

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 22nd July, 2020, passed by the Income Tax Appellate Tribunal, Kolkata Bench, 'D Virtual Court', Kolkata (Tribunal) in ITA No. 1486/Kol/2019, for the assessment year 2014-15.

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

- A. Whether the Learned Tribunal has committed substantial error in law in confirming the decision of Learned Commissioner of Income Tax (Appeals) in allowing Long Term Capital Loss of Rs. 1,09,80,30,873/- on transfer of Government Securities after applying cost inflation Index on sale of Government Securities and holding he Government Securities are not bond and debentures for the purpose of 3rd proviso to Section 48 of the Act (4th Proviso after amendment) which is petently wrong and latently irregular ?

- B. Whether the Learned Tribunal has committed substantial error in law in confirming the decision of Learned CIT(A) for allowing set off of brought forward long term capital loss of Rs. 2,79,36,337/- against the short term gain computed on depreciable assets under Section 50 of the Income Tax Act, 1961 thereby misread and misinterpreted the said provision of law and so the direction of Tribunal is perverse ?
- C. Whether the Learned Tribunal has committed substantial error in law in confirming the decision of Ld. CIT(A) for deleting the addition of Rs. 67,56,925/- under Section 14A of the Income Tax Act, 1961 as proportionate interest of Rs. 67,56,925/- was computed under Rule 8D(ii) of the Income Tax Rules ?
- D. Whether the Learned Tribunal has committed substantial error in law in confirming the decision of CIT(A) for deleting the addition of Rs.8,93,88,975/- was computed under Rule 8D(iii) of the Income Tax Rules ?
- E. Whether the Learned Tribunal has committed substantial error in law in confirming the decision of CIT(A) for deleting the addition of expenses of advertisement/publicity, repair, maintenance of Rs. 10,19,816/- under Section 40(a)(ia) of the Income Tax Act and accepting the fresh evidence of expenses without remanding the case to the Assessing officer which violates rules 46A of I.T. Rules 1962 ?
- F. Whether the Learned Tribunal has committed substantial error in law in confirming the decision of Learned CIT(A) for allowing the Education Cess as expenditure under Section 37(1) of the Income Tax Act, 1961, which is not in accordance with law and as such present because it is a part of Income Tax ?

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel appearing for the appellant/revenue and Mr. Abhijit Chatterjee, learned Senior Counsel, assisted by Mr. Gopal Ram Sharma, learned Advocate for the respondent/assessee.

So far as the substantial question of law no. (A) is concerned, the learned Tribunal had followed the assessee's own case for the assessment year 2010-11 and dismissed the appeal of the revenue. As against the said order of the learned Tribunal, the revenue had filed ITAT 77 of 2021 before this Court, which was dismissed by order dated 10th December, 2021. Though the application for condonation of delay filed by the revenue was dismissed as sufficient cause was

not shown for condonation of the delay, the appeal stood rejected. Therefore, the order passed in the assessee's own case for the assessment year 2010-11 stands affirmed. Accordingly, the substantial question of law no.(A) is answered against the revenue.

The question of law nos.(C) to (F) were raised by the revenue before this Court in the assessee's own case in ITAT 164 of 2021 and by judgment dated 11th April, 2022 the questions were answered against the revenue. The operative part of the judgment reads as follows :-

"We have heard Mr. Soumen Bhattacharjee, learned Standing Counsel appearing for the appellant/revenue and Mr. Abhijit Chatterjee, learned Senior Counsel appearing for the respondent/assessee.

On perusal of the order passed by the Tribunal, we find that the Tribunal has taken note of the fact that the Assessing Officer had not recorded satisfaction before invoking Rule 8D of the Income Tax Rules. This appears to have been the position for the assessment year 2013-14 also. Therefore, the order passed by the Commissioner of Income Tax (Appeals)-1, Kolkata [CIT(A)] was confirmed. We find no grounds to interfere with the finding recorded by the Tribunal.

With regard to the second issue, namely, deleting the addition made on account of sale of rights in property and carrying forward of loss to the future years, the Tribunal followed the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT (1992) 193 ITR 321 (SC). We find that there is no ground to interfere with the said finding.

With regard to the third issue regarding allowance or deduction of education cess under Section 37(1), the Tribunal has remanded the matter for consideration to the Assessing Officer after partly accepting the stand taken by the assessee. This finding also does not call for any interference.

For the above reasons, the appeal filed by the revenue is dismissed. Substantial questions of law are answered against the revenue.

With the dismissal of the appeal, the application for stay being IA No.GA/2/2021 also stands dismissed."

This leads us to only substantial question of law no.(B). The learned Tribunal followed the decision of the Hon'ble Supreme Court in *Commissioner of Income Tax, Panji vs. V.S. Dempo Company Ltd.*, (2016) 74 taxmann.com 15(SC), wherein it was held that the assessee therein is entitled to exemption under Section 54E in respect of capital gains arising out of transfer of capital asset on which depreciation has been allowed. The decision of the Supreme Court of Bombay in *Commissioner of Income-tax vs. ACE Builders (P.) Ltd.*, (2005) 144 Taxman 855 (Bombay) stood affirmed by the decision in *V.S. Dempo Company Ltd.* (supra). Further, the decision of the High Court of Bombay in *Commissioner of Income-tax vs. Parrys (Eastern) (P.) Ltd.*, (2016) 66 taxmann.com 330 (Bombay) is also in favour of the assessee wherein it was held that where deemed short-term capital gain arose on account of sale of depreciable assets that was held for a period to which long-term capital gain would apply, the said gain would be set off against brought forward long-term capital loss and unabsorbed depreciation.

Thus, the learned Tribunal rightly rejected the case of the revenue.

Accordingly, the substantial question of law no.(B) is answered against the revenue.

In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

The application also stands dismissed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)