O–102

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

ITAT/223/2003
M/S. BANMILA COMMOTRADE PVT. LTD.
VS.
COMMISSIONER OF INCOME TAX (APPEALS)-I, KOLKATA & ANR.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 9th September, 2022

Appearance :
Mr. Ananda Sen, Adv.
Mr. Sabyasachi Mandal, Adv.
....for appellant

Mr. Smarajit Roy Chowdhury, Adv.
... for respondents

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 20th March, 2003, passed by the Income Tax Appellate Tribunal, `SMC' Bench, Kolkata in ITA No.1548(Cal) of 1996 for the assessment year 1997-98.

The appeal was admitted on 5th October, 2004 to decide the following substantial questions of law :-

I. Whether in case of a company whose principal business is of purchase and sale of shares on facts as well as on the basis of Memorandum of Association, it could be held that Section 72 will not apply for carrying forward and set off of loss and Explanation to Section 73 will apply where the explanation being a legal fiction can be limited to cases where a part of business consists of sale and purchase of shares ?

II. Whether the loss arising from the business of dealing in shares not falling under the definition of speculative transaction appearing in Section 43(5) of the Act can be carried forward under Section 72 of the Act and whether in such a case the said claim can be disallowed by relying upon the Explanation to Section 73 of the Act ?

We have heard Mr. Ananda Sen, learnd Counsel appearing for the appellant/assessee and Mr. Smarajit Roychowdhury, learned standing Counsel appearing for the respondent/revenue.

The short question involved in the instant case is whether the income of Rs.2,61,160/- which was offered under the head `Business' before the Assessing Officer could be directed to be treated as income under the head `Other Sources'. Admittedly, before the Assessing Officer such a plea was never raised. It is for the first time that the assessee approached the Commissioner of Income tax (Appeals) - I, Kolkata, [CIT(A)]. Such a ground was canvassed by the assessee contending that the Assessing Officer ought to have treated the professional and consultancy income of Rs.2,61,160/- under the head `Income from business' as against income under the head `Other Sources' and thereby committed an error in treating the share trading loss of Rs.2,51,000/- as deemed speculative loss under Explanation 2 to Section 73 of the Act instead of treating the same as loss incurred in share trading under the head `Income from business'.

When the CIT(A) considered the said submission and has made an observation that such a ground is canvassed by the assessee for the first time at the belated stage and they would not be entitled to do so, not stopping with that CIT(A) proceeded to examine the correctness of such contention and pointed out that no convincing reasons have been set out as to why the professional and consultancy income should be treated as income from other sources. The CIT(A) further held that professional and consultancy income should remain under the head `business'. Accordingly, the appeal filed by the assessee was dismissed.

Aggrieved by the same, the assessee preferred appeal before the Tribunal and reargued the contentions submitted before the CIT(A). The Learned Tribunal has examined the factual position and held that admittedly the income of the assessee is from professional and consultancy income and going by the very nature of such income, it is an income from profession and therefore rejected the contention of the assessee that it should be treated as income from other sources. Thus, the two authorities as well as the Learned Tribunal on facts concurrently held against the appellant.

In an appeal under Section 260 of the Act, we are not expected to re-examine the factual position but we are to ascertain as to whether any substantial question of law arises for consideration.

On going through the orders passed by the authorities as well as the Tribunal, we have no hesitation to hold that no substantial questions of law arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

S.Pal/SN.