

ITAT/184/2014
IA NO.GA/1/2014 (Old No.GA/3727/2014)

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

COMMISSIONER OF INCOME TAX, KOLKATA
- III, KOLKATA
-Versus-
M/S. MEENAKSHI TEA CO. LTD.

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

Mr. Bodhayan Bhattacharya, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 8th June, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 4th July, 2014 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No.1511/Kol/2012 for the assessment year 2009-10.

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

- (a) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal, 'B' Bench Kolkata erred in law in upholding the order

of the CIT(Appeals) - VIII, Kolkata in holding that the Assessee Company's loss from purchase and sale of share to the tune of Rs.5,10,28,564/- was not covered by the Explanation to provisions of section 73 of the Income Tax Act, 1961 and the same is non Speculation Loss?

- (b) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal, 'B' Bench Kolkata erred in law in upholding the order of the CIT(Appeals) - VIII, Kolkata in holding that the deployment of funds in the instant case is more in the business of money lending from where the interest was earned and further the income earned from sources other than share transactions and also in treating the loss so incurred by the assessee-company as non-Speculation Loss and Explanation to provision of Section 73 of the Income Tax Act, 1961 is not applicable in this case?
- (c) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal, 'B' Bench Kolkata erred in law in upholding the order of the CIT(Appeals) - VIII, Kolkata in holding that the entire disallowance made by the Assessing Officer Rule 8D(2)(iii) of the Income Tax Act, 1961

is not applicable on this issue without assigning any findings as regards the inapplicability of the provisions of section 14A of the Income Tax Act, 1961 read with Rule 8D(2)(iii) of the Income Tax Act, 1961?

We have heard Mr. Prithu Dudheria, learned standing counsel appearing for the appellant/revenue and Mr. Bodhayan Bhattacharya, learned counsel appearing for the respondent/assessee.

The appeal was heard by the Hon'ble Division Bench and by order dated 17th December, 2014 the questions of law (a) and (b) as suggested above were dealt with and the Division Bench held that they are not substantial questions of law and they were rejected. The operative portion of the order is as follows :

"Heard Mr. Bandopadhyay, learned Advocate for the appellant. He prays for admission of the appeal on the questions raised.

The issue arising out of the first two questions relate to, whether the assessee's loss from purchase and sale of shares to the tune of Rs.5,10,28,564/- was or was not covered by the Explanation in Section 73 of the Income Tax Act, 1961?

In the assessment order, it was held, inter alia, that :

"The character of loss suffered by the assessee from its share trading and the provisions contained in Explanation below section 73 were specifically discussed with the A/R. From the details submitted by the A/R, it has emerged that the assessee has no income under the heads 'interest on

securities', 'income from other sources' and 'income from house property' respectively, though it has incurred a loss of Rs.54,83,881/- chargeable under head 'capital gains (short term)'

.....From the A/R's submission noted above, it is amply clear that the granting of loans and advances is not the principal business of the assessee, rather the assessee had resorted to occasionally granting such loans and advances in order to maintain its corporate status as NBFC, thereby supplementing the investment activity. From the accounts, it is evident that the assessee is actively engaged in capital market transactions, viz. Share trading and derivative transactions. All these facts coupled with discussions made in para 2.1 and 2.2 above clearly establish that the assessee's case is **not covered** by any of the exceptions mentioned in Explanation mentioned below section 73. That is (a) the gross total income of the assessee does not consist mainly of income which is chargeable under the heads "Interest on Securities", "Income from house property", "Capital gains" and "Income from other sources"; or (b) the principal business of the assessee is not the business of banking or the granting of loans and advances."

On appeal preferred, the CIT (Appeals) held as follows :

"As per the gross total income worked out above, the business income of the appellant will be 11.5% of total gross income, if the loss on sale of investment is considered separately and if loss on sale of investment is deducted from income from other source than the percentage of business income of the appellant will be nearly 19.09% of gross total income. To sum up the gross total income of the appellant when computed in accordance with the Hon'ble Special Bench decision I the case of Concord Commercial (P) Ltd. (supra) it will consist mainly of income chargeable under the head "Interest on securities". "Income from house property",

"Capital gains" and "Income from other sources" hence the explanation to Section 73 will not be applicable to the case of the appellant and accordingly the loss on trading of share cannot be termed as speculation loss".

The Tribunal confirmed such finding of the CIT (Appeals) made on facts.

In the circumstances, we find no substantial question of law arises on the said two questions.

In so far as the third question is concerned, hearing is necessary. Learned Central Government Advocate is directed to serve copy of the Stay Application and Memorandum of Appeal along with a copy of this order on the Respondent by speed post by 24.12.2014 to enable it to appear and make its submissions on the adjourned date.

List this matter appear under the heading "For Order" on 15.1.2014 when the appellant shall file Affidavit-of-Service. "

From the above order it is seen that only in respect of third question which has been suggested by the revenue, notice was directed to be issued to the respondent/assessee. We have considered the submissions on either side and perused the findings rendered by the learned tribunal on the third question. The tribunal has recorded the following factual finding with regard to the said question:

"9. We have heard rival submissions and gone through facts and circumstances of case. We find that assessee has not spent any amount on interest on borrowing as at 01.04.2008 and borrowing taken this year was not utilised in investment. Assessee has erred big income from derivative transactions at Rs

5,42,61,231/- and suffered loss on investment at Rs. 1,22,81,662/- i.e. total expenses claimed are only Rs. 1,42,48,311/-. Dividend income being only 1.5% of gross income Rs 2,13,724/- being 1.5% of expenses can be attributed to dividend against which the company has offered Rs. 2,41,126/-. Further, there are direct expenses at Rs 56,023/- as calculated A.Y. will apply in view of the provisions of Section 14A r.w.r 8D of the rules. In assessee's case only Rule 8D(2)(i) is applicable and not 8D(2)(iii). Clause (ii), which clearly provides that formula giving therein is to be evoked only in a case where assessee has incurred expenditure by way of interest during the previous year which is not directly attributable to any particular income or receipt. In this case Interest payment is only Rs 4,801/-. This interest is attributable to loans not utilised for investment but for giving loans to Shakti Sugar Ltd. i.e. Rs 3,00,000/- and Rs 7,00,000/- paid as security deposit to SKP Securities. Rs 37,00,000/- taken from Parkview Properties Pvt. Ltd. and Rs 3 lacs and Rs 7 lacs from Bikanna Commercial Pvt. Ltd. and Shahjahanpur Electric Co. Ltd. respectively. In view of the above facts, we have no alternative except to confirm the order of CIT(A) and this issue of Revenue's appeal is dismissed".

Reading of the above finding of the tribunal which had approved the finding of the Commissioner of Income Tax (Appeals), we find that the tribunal has rightly taken note of the factual position and rejected the appeal filed by the revenue. That apart, the law under issue has been well-settled and under what circumstances the provision available under Rule 8D(2) can be made applicable and mechanical exercise of such power was held to be bad in law. Therefore, we find that no question of law much less

substantial question of law arises for consideration on the third issue as well.

Hence, the appeal is dismissed.

With the dismissal of the appeal, the connected application (IA No.GA/1/2014) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)