

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

ITA/22/2012
COMMISSIONER OF INCOME TAX, CENTRAL- II
VS.
M/S. RELIANCE TRADING ENTERPRISES LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st March, 2023

Appearance :
Mr. Tilak Mitra, Adv.
....for appellant.

Mr. Rajeev Kumar Jain, Adv.
... for respondent.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the common order dated 28th July, 2010, passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata (Tribunal) in ITA No. 505/Kol/2010 along with CO. No.42/Kol/2010 for the assessment year 2006-07.

The appeal was admitted on 19th January, 2012 on the following substantial questions of law :

- "i) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in treating the profit on sale of investment as capital gain instead of business income since the share transactions were commercial in nature ?*
- ii) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in restricting the*

disallowance of Rs,8,48,305/- made under Section 14A of the Income Tax Act, 1961 to Rs.12,000/- ?

We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant and Mr. Rajeev Kumar Jain, learned advocate for the respondent.

It is submitted by the learned advocate appearing for the respondent that the name of the respondent company is presently known as M/s. Avant Garde Re-Energy Ltd.. This correction be done in the cause-title.

With regard to the first substantial question of law, we find that the investments in the share were made in the earlier assessment year and in respect of the earlier assessment years, namely, for the years 2004-05 and 2005-06, the purchase and sale of shares and securities were held to be investment. Furthermore, the department did not dispute the fact that the shares were shown by the assessee under the head 'investment' in its balance sheet for the earlier assessment years as well. The orders passed by the Tribunal in respect of the assessee's own case for the earlier assessment years had attained finality.

Thus, considering the totality of the facts and circumstances of the case, the learned Tribunal had affirmed the view taken by the Commissioner of Income Tax (Appeals), who had reversed the order passed by the Assessing Officer and directed the Assessing Officer to accept the long term capital gain as claimed by the assessee in its return of income.

We find that there is no error in the approach of the learned Tribunal nor the revenue has been able to show as to why the consistent approach should not be maintained in the assessee's case when the orders passed by the Tribunal for

the earlier years had attained finality. Therefore, the appeal would stand rejected and the substantial question of law no.1 is answered against the revenue.

So far as the substantial question of law no.2 is concerned, the learned Tribunal had taken note of the fact that reasonable disallowance of Rs.12,000/- in terms of Section 14A had been made and there was no justification for the Assessing Officer to take a different view or for that the matter, the Commissioner of Income Tax (Appeals). Thus, the reasoning adopted by the learned Tribunal to allow the cross-objection filed by the assessee by restricting the disallowance of Rs.12,000/- does not warrant interference.

Accordingly, the appeal would stand rejected and the substantial question of law no.2 is answered against the revenue.

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

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)