

OD-8, 9 & 10

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

ITAT/62/2023
IA NO.GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX -9, KOLKATA
VS.
M/S. STEEL AUTHORITY OF INDIA EMPLOYEES' CO-OPERATIVE
CREDIT SOCIETY LTD.

ITAT/63/2023
IA NO.GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX -9, KOLKATA
VS.
M/S. STEEL AUTHORITY OF INDIA EMPLOYEES' CO-OPERATIVE
CREDIT SOCIETY LTD., KOLKATA

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VS.
M/S. STEEL AUTHORITY OF INDIA EMPLOYEES' CO-OPERATIVE
CREDIT SOCIETY LTD.

BEFORE :

THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th April, 2023

Appearance :
Ms. Smita Das De, Adv.
...for the appellant

Mr. Saumya Kejriwal, Adv.
Mr. G.S. Gupta, Adv.
...for the respondent

The Court : We have heard Ms. Smita Das De, learned standing counsel
for the appellant and Mr. Saumya Kejriwal, learned counsel for the respondent.

There is a delay of 168 days in filing these appeals.

We have perused the affidavit filed in support of the petition for condonation of delay and we find that sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence the applications for condonation of delay are allowed. Delay in filing the appeal is condoned.

These appeals have been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the common order dated 18th April, 2022 passed by the Income Tax Appellate Tribunal, 'B' Bench, Kolkata in I.T.A No. 426 to 428/Kol/2020 and 268 to 269/Kol/2021 for the assessment year 2012-13, 2013-14 and 2014-15. The revenue has raised the following substantial questions of law for consideration :-

- a) Whether in the facts and circumstances of the case the Tribunal was justified in law to hold that any disallowances under Section 14A of the said Act was not applicable on the exempt income earned by the assessee ?
- b) Whether in the facts and circumstances of the case the Tribunal was justified in law to treat the transaction of sale and investment in equity and mutual funds as business income instead of capital in nature despite the settled proposition of law as held by the Hon'ble Apex Court in the case of Totagars Co-operative Sales Society Ltd. reported in (2010) 188 Taxmann 282 Supreme Court ?
- c) Whether in the facts and circumstances of the case the Tribunal was justified in law to dismiss the appeal of the Revenue relating to disallowances of expenditure incurred in relation to exempt income earned by the assessee by invoking sub-rule 2(ii) of Rule 8D of the Income Tax Rules 1962 ?

The first issue which arises for consideration is with regard to whether the action of the Assessing Officer in accepting the assessee's treatment of income from sale of mutual funds and shares as income from business should be accepted. The learned Tribunal has affirmed the view taken by the Commissioner of Income tax (Appeals) and has specifically noted that the department is required to maintain a consistent stand why the issue which was a recurrent issue and departure can be made only when fresh material is available to do so.

We find that revenue has consistently accepted the stand of the assessee that it is a trader of shares and mutual funds for the assessment years 2005-06 to 2007-08 and in the year 2008-09 the Assessing Officer deviated and such order was reversed by the Commissioner of Income tax (Appeals). Subsequently the Assessing Officer had again treated the assessee's income as a capital gain from the investments for the assessment year 2011-12, which was reversed by the CIT(A) and it was held to be business income and that order passed by the CIT(A) has not been challenged by the department and has been allowed to attain finality. Thus, the Tribunal rightly noted the decisions of the Hon'ble Supreme Court in *Radha Swamy Satsang vs. CIT*, (1992)193 ITR 321(SC) and held that the principle of rule of consistency has to be applied in the assessee's case. Thus, we find that the order passed by the Tribunal was just and proper and does not call for any interference.

The second issue is whether the order of the Assessing Officer disallowing the expenditure by invoking Section 14A of the Act, read with Rule 80P(2), 80P(2)(a)(i) and 3(i) and Income tax Rules, 1962. On going through the order passed by the Tribunal, we find that the relevant decision on the point has been

noted and the case has been decided in favour of the respondent assessee. The issue is fully covered by the decisions of the Supreme Court in the case of South Indian Bank of India Ltd. vs. CIT, (2021) 438 ITR 1 (SC). Thus, the Tribunal rightly answered the said issue in favour of the respondent assessee.

In the result, the appeals filed by the revenue are dismissed and the substantial questions of law are answered against the revenue.

The stay applications are closed.

(T.S. SIVAGNANAM, J.)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)