

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

ITA/268/2005
C.I.T. CENTRAL 1
-Versus-
J.K. INDUSTRIES LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 7th February, 2023

Appearance :
Mr. Om Narayan Rai, Adv.
...for appellant
Mr. J.P. Khaitan, Sr. Adv.
Mr. Pranit Kr. Bag, Adv.
Mr. A. Agarwalla, Adv.
Ms. P. Garain, Adv.
....for respondent

The Court : We have heard learned Counsel for the either side.

This appeal filed by the revenue filed under Section 260A of the Income Tax Act, 1961(the Act) is directed against the order dated 29th June, 2004 passed by the Income Tax Appellate Tribunal “D” Bench, Kolkata (the Tribunal) in ITA No. 2519/Kol/2003 and ITA No. 2471/Kol/2003 for the block period 2000-2001. The appeal was admitted on 27.11.2015 on the following substantial questions of law :-

- i) Whether on the facts and circumstances, the Tribunal is justified in law in holding that payment of Rs.17,05,646/- paid to Lakshmi Pat Singhania Education Foundation does not come within the purview of Section 40A(9) of the Income Tax Act, 1961 and in that view deleting the disallowance of Rs.17,05,646/- ?

- ii) Whether on the facts and circumstances of the case ITAT erred in law in upholding CIT(A)'s decision in directing the AO to deduct the amount of Rs.20,45,07,768/- from the net profit to arrive at book profit for the purpose of Section 115JA of the Income Tax Act, 1961?
- iii) Whether on the facts and circumstances of the case the learned ITAT erred in law in appreciating that for the purpose of computing book profit under Section 115JA of the Income Tax Act 1961 the deduction of Rs.4,59,22,88/- under Section 80HHC of the Income Tax Act has to be computed on the basis of net profit as disclosed in the profit and loss account and not on the basis of the assessed business income of the assessee and in that view allowed relief under Section 80HHC of the Income Tax Act, 1961 ?
- iv) Whether on the facts and circumstances of the case, the learned ITAT has erred in law in appreciating that on account of damage received by the assessee, the amount of Rs.30,07,460/- from M/s. International Cooperative Alliance Domus Trust could not be brought to capital gains tax and in that view directed to be deleted the said amount of Rs.30,07,460/- ?

We have heard Mr. Om Narayan Rai, learned standing Counsel for the appellant and J.P. Khaitan, learned senior Counsel duly assisted by Mr. Pratyush Jhunjhunwala, appearing for the respondent/assessee.

Mr. Om Narayan Rai, learned Counsel for the appellant pointed out that substantial questions of law numbers 3 and 4 as admitted by this Court in its order dated 27.11.2015 raises certain other issues. We have perused the said substantial questions of law and we find that so far as the issue in question of

law No. 3 is concerned, the learned Tribunal has discussed the same in paragraph 10 of the impugned order. It is found from the facts set out therein that the assessee was allowed relief under Section 80HHC by the Assessing Officer. However, subsequently, upon calculation it was found that as against Rs.3,21,83,712/- the assessee was entitled for relief under Section 80HHC to the tune of Rs.4,49,22,889/-. Taking note of this factual position, direction was issued to the Assessing Officer to grant relief to the said extent. Thus, we find that there is no error in the observation of the learned Tribunal in this regard.

So far as substantial question of law No. 4 is concerned, the said issue has been dealt with by the learned Tribunal in paragraph 18 of the impugned order. It was submitted by the assessee that the said claim of Rs.30,07,460/- was a claim by giving up a right to specific performance inasmuch as an out of Court settlement resulted in receipt of Rs.99 lakhs, part of which amounting to Rs.30,07,460/- was received by the assessee on account of an order passed by the High Court of Delhi in a case filed by the assessee for specific performance. Further, the learned Tribunal found that there was no transaction between the assessee and the landlord whose property was to be purchased by negotiating the price. The necessary documents and copies of the Court orders were placed before the Tribunal in the form of a paper book. Furthermore, the Tribunal also took note of the decision of this Court in the case of *Ashoke Marketing Limited*, reported in 164 ITR 664 and held the assessee was entitled to relief.

In the absence of any distinguishing features brought by the revenue before us, we are inclined to uphold the decision of the learned Tribunal, more particularly when the Tribunal was satisfied on facts based on the documents

and the copies of the Court orders which were placed before us. Accordingly, this issue is also decided against the revenue.

After we have elaborately heard the learned Advocates for the parties and after having perused the order passed by the learned Tribunal we find that the four substantial questions of law which have been admitted by this Court are in fact the very same questions which were dealt with by the learned Tribunal as could be seen from paragraph 2 of the impugned order. The learned Tribunal has considered the factual position and found that in the assessee's own case for earlier assessment years all the substantial questions of law admitted for consideration were decided in favour of the assessee. The learned Tribunal also records that there is no contrary material brought on record by the revenue to deviate from the decisions already arrived at by the Tribunal.

Thus, when the relief had been consistently granted to the assessee on all the issues and those orders have attained finality, consistency is required to be maintained, more so when no distinguishing features have been brought out before this Court for the assessment year under consideration.

Thus, for the above reasons, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)