

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

ITAT/136/2022
IA NO: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS.
M/s. P G COMMERCIALS PVT.LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8TH FEBRUARY, 2023

Appearance :
Mr. Soumen Bhattacharjee, Adv.
...for appellant
Mr. S.M. Surana, Adv.
Mr. Bhaskar Sengupta, Adv.
...for respondent

The Court : - Heard learned Counsel for 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 18th June, 2021 passed by the Income Tax Appellate Tribunal 'A' Bench Kolkata in ITA No.104 (Kol) of 2020 relating to Assessment Year 2014-2015.

The Revenue has raised the following substantial questions of law for consideration:-

- i) Whether on the facts and circumstances of the instant case and in law the Income Tax Appellate Tribunal erred in quashing the order passed under section 263 of the Income Tax Act, 1961 by Learned Principal Commissioner of Income Tax, as the assessment order under section 143(3) of the Act, passed by the assessing officer is erroneous in so far as it is prejudicial to the interest of the revenue ?

- ii) Whether on the facts and circumstances of the instant case and in law the Income Tax Appellate Tribunal was justified in granting relief without analyzing and appreciating the facts of the case which related to calming of bogus LTCG/STCL through penny stock and same is falls under the exceptional as specified in Circular No. 23 of 2019 dated 06.09.2019 ?

The issue which falls for consideration in the instant case is whether the Principal Commissioner of Income Tax was justified in invoking his jurisdiction under Section 263 of the Act. On going through the order passed by the learned Tribunal we find that the learned Tribunal has examined the facts and found that the assessing officer has carried out elaborate enquiry in respect of the short term capital loss claimed by the assessee on the three scrips. In this regard the learned standing Counsel appearing for the respondent/assessee has filed copy of the paper book which was filed before the Tribunal. From the paper book it is seen that the assessing officer had issued notice under Section 143(2) of the Act and called for certain documents which were submitted by the assessee along with their letter dated 3rd September, 2015. Thereafter another notice under Section 142(1) of the Act dated 14.7.2016 was issued to which the assessee filed detailed reply. Thereafter another notice under section 142(1) was issued on 25.11.2016 and the assessee filed the reply on 1.12.2016 along with evidence in respect of the transaction in shares. The evidences include statement showing scripwise, datawise, quantity and amount of pending stock, purchase, sales, closing stock and profits/loss arising therefrom. The copies of the purchase ledger as well as sales ledger, closing stock detailed DP holding statement, showing closing stock, market quotation, in respect of valuation of closing stock, demat charges ledger, brokers' ledger in the books of the

assessee's ledger, in the books of the brokers and datawise contract notes. Apart from the said documents copies of the demat statement for the financial year 2013-14 showing delivery received and made was also furnished along with copy of the bank statement showing payments made and received against purchase and sales of shares. After taking note of this document the assessing officer has conducted an elaborate enquiry which was noted by the Tribunal in paragraph 7 of the impugned order. Thus on going through the facts the learned Tribunal held that only inference that can be drawn is assessing officer having gone through the reply and the supporting material was satisfied with the same and has not preferred to draw any adverse view against the claim of the assessee. In respect of the short term capital loss from the sale of three scrips. Therefore, Tribunal found there was absolutely no justification on the part of the Principal Commissioner of Income Tax to invoke his jurisdiction under Section 263 of the Act. The learned Advocate appearing for the respondent placed reliance on the decision of this Court in the case of *Principal Commissioner of Income Tax (2), Calcutta Vs. Kaushallya Dealers Pvt. Ltd.* in ITA No. 72 of 2022 dated 24.11.2022, wherein the issue which was considered was whether the exercise of power by the Principal Commissioner of Income Tax under Section 263 of the Act was justified. The transaction in the said case was more or less identical to the transaction in the case before us. It was found that elaborate explanation was given by the assessee to the query raised by the revenue and after taking note of the entire facts and conducting a detailed enquiry the assessing officer has complied with the assessment and in absence of twin conditions required to be fulfilled invoking the power under Section 263 of the Act, the proceedings were held to be invalid and the order passed by the Tribunal was confirmed and the appeal by the revenue was dismissed.

In the light of the above factual position we are of the considered view that there is no substantial questions of law arising for consideration in this appeal.

Accordingly, the appeal fails and dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.