

ITA/363/2009

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
KOLKATA - III

-Versus-

RUGUVALIKA TRADING PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 17th February, 2023

Appearance :
Mr. Smarajit Roychowdhury, Adv.
...for the appellant.

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 17th July, 2009 passed by the Income Tax Appellate Tribunal, "D" Bench, Mumbai (the Tribunal) in ITA No.1346/Mum/2008 for the assessment year 2004-05.

The appeal was admitted on 7th January, 2010 on the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal has erred in

law in holding that the loss on sale and purchase of mutual fund units was an allowable loss ?"

We have heard Mr. Smarajit Roychowdhury, learned standing counsel appearing for the appellant/ revenue.

After elaborately hearing the learned standing counsel for the appellant and carefully considering the materials placed on record, we find that the revenue was aggrieved by the order passed by the Commissioner of Income Tax (Appeals)-XXX, Mumbai [CIT(A)] dated 19th November, 2007 by which the assessee's appeal was partly allowed by holding that the loss suffered by the assessee on account of bonus stripping is allowable. The learned Tribunal after considering the facts of the case and as to how the CIT(A) proceeded, took note of the fact that the issue is covered by the decision of the High Court of Bombay in the case **Walfort Share and Stock Brokers Pvt. Ltd., 310 ITR 421 (Bom)**. In the memorandum of grounds of appeal filed before this Court, the revenue does not dispute as regards the effect of the decision of the High Court of Bombay.

On the second issue, with regard to the bonus units, the learned Tribunal has once again reappreciated the factual position and also held that the CIT(A) has relied on the decision of the Hon'ble Supreme Court in **CIT vs. Motilal, 41 ITR 382 (SC)**. Further, on facts, it found that the addition is tax neutral because in the subsequent year when the units were

sold their costs was taken at 'Nil' thereby bringing the entire sale considerable as taxable profit.

Thus, we find there is no error in the reasoning adopted by the learned Tribunal for this Court to interfere with the said order.

Accordingly, the appeal (ITA/363/2009) filed by the revenue is dismissed and the substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)