O-84

ITA/380/2009

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

COMMISSIONER OF INCOME TAX,
KOLKATA - II

-Versus-

GUINESS SECURITIES LTD.

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

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

Mr. R.N. Bandyopadhyay, Adv.
...for the respondent.

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 4th June, 2009 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA Nos.622 & 623/Kol/2009 for the assessment years 2002-03 and 2004-05.

The appeal was admitted on 2nd February, 2010 on the following substantial question of law:

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

in holding that all incomes of the assessee i.e., income from interest and brokerage as stock broker income from delivery based share transaction and income from non-delivery based share transactions are to be taken together as arising from composite business of speculative nature ?"

We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant/revenue and Mr. R.N. Bandyopadhyay, learned counsel for the respondent/assessee.

As could be seen from the assessment order, the tax payable by the assessee for the assessment year 2002-03 is Rs.37,09,641/- and for the assessment year 2004-05 is Rs.79,34,624/- which are below the threshold limited fixed by the CBDT for pursuing the appeal before this Court.

Hence, the revenue cannot pursue this appeal.

Accordingly, the appeal(ITA/380/2009) filed by the revenue stands disposed of on the ground of low tax effect and the substantial question of law is left open.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.pal