

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

ITA/149/2011
COMMISSIONER OF INCOME TAX, KOL II, KOLKATA
VS
ALL BANK FINANCE LIMITED

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 6th May 2024.

Appearance:

Mr. Om Narayan Rai, Advocate
... for the appellant.

Ms. Swapna Das, Advocate
... for the respondent.

1. Heard Sri Om Narayan Rai, learned senior standing counsel for the appellant and Sm. Swapna Das, learned counsel for the respondent.
2. This appeal was admitted by this Court by order dated 20th July 2011, on the following substantial questions of law:-

“(i) Whether the learned Tribunal below committed substantial error of law in directing the deletion of interest amount of Rs.7.18 crore from the income of the assessee, which was the interest amount at the rate of 24% p.a. and which the assessee was entitled to receive from M/s. V. B. Desai & Co. on accrual as the assessee was following the mercantile system of accounting.

(ii) Whether the concession made by counsel on a question of law before any Court of Law or Tribunal is binding on the concerned party.”

3. We have considered the submissions of learned counsel for the parties and perused the impugned order of the Tribunal. The present appeal relates to the assessment year 2002-03. In paragraph 3 of the impugned order, the Income Tax Appellate Tribunal, Bench “A”, Kolkata has recorded a finding as under:-

“3. At the time of hearing before us, both the parties have fairly conceded that the issue of notional interest of V.B. Desai & Co. is squarely covered by the orders of the Tribunal dated 28.9.2008 in assessee's own case for the assessment year 1993-94.”

4. It has not been disputed by learned counsel for the appellant before us that the question of interest as involved in the assessment year 2002-03 was also involved in the assessment year 1993-94. The matter was carried up to the Tribunal and the Tribunal in its order dated 28.09.2008 held as under:-

“10.6 We have examined the rival submissions. We find that the contention of the departmental representative has no merit and cannot be accepted. The Special Court adjudicated the respective rights of the parties involved in the transactions. It decided on the nature of such transactions after thorough examination of oral and documentary evidence. The

assessment relating to such transactions cannot be made de hors adjudication. Irrespective of the date of such adjudication, which will always be much after the dates of such transactions or events, such adjudication has its efficacy since the very inception. The adjudication does not create any new relationship but only decides what was all along there.

10.7 We further find that the addition of Rs.9.02 crores on account of alleged accrued interest on alleged dues of VBD cannot stand in view of the finding of the Special Court that the said shares of other companies and bonds were given by VBD in May, 1992 in full and final settlement of the assessee's dues. The addition of Rs. 9.02 crores is directed to be deleted. Ground No.2 in the assessee's appeal is allowed."

5. The appellant herein agreed that the controversy regarding interest is covered by the Tribunal's order dated 28.09.2008 relating to assessment year 1993-94. The Tribunal reproduced the relevant portion of its earlier order (afore-quoted) and held as under:-

"3.1 Keeping in view of the fact that the facts involved in the present assessment year are similar to that of the one decided by the Tribunal in assessee's own case in ITA No. 679/Kol/05 for the assessment year 1993-94, we find no infirmity in the orders of the Ld. CIT(A), which are in conformity with the orders of this Tribunal. Therefore, we allow the ground taken by the assessee."

6. Learned counsel for the appellant neither disputed before us that the controversy involved in the present appeal i.e. relating to assessment year 2002-03 is identical to that as was involved in the assessment year

1993-94, nor has disputed the findings recorded by the ITAT in paragraph 10.7 (afore-quoted) of the order relating to assessment year 1993-94. The impugned agreed order was passed by the ITAT when the appellant herein agreed on facts. We specifically asked learned counsel for the appellant to apprise the Court as to which concession in law was granted before the Tribunal but the learned counsel for the appellant could not point out that the concession was granted on law.

7. Under the circumstances, we do not find any merit in this appeal. Consequently, the appeal is dismissed. The substantial questions of law are answered accordingly.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar