

OD - 3

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/2/2025
IA NO: GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2 KOLKATA
VS
M/S JAJODIA FINANCE LIMITED

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 22nd July, 2025

Appearance :
Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Mr. Shradhya Ghosh, Adv.
..for the appellant.

Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Avra Mazumder, Adv.
Ms. Alisha Das, Adv.
Mr. Kausheyo Roy, Adv.
Mr. Gaurav Gupta, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
...for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated February 29, 2024 passed by the Income Tax Appellate Tribunal, A- Bench, Kolkata (the Tribunal) in ITA/614/Kol/2023 for the assessment year 2014-15.

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

“i. Whether in the facts and in the circumstances of the case the tribunal was justified in law to delete the addition of Rs 1,97,94,148/ made on account of bogus share trading loss claimed by the assessee which could not be substantiated by the assessee and give plausible explanation to the genuineness and the creditworthiness of the transaction in question.

ii. Whether on the facts and the circumstances of the case the tribunal was justified in law to hold that the statement recorded during the survey proceedings has no evidentiary value and further holding that the additions have been made in this merely on the basis of suspicion ignoring the judicial ratio laid down in the case of PCIT vs. Swati Bajaj in ITA no. GA/2/2022 dated 14.06.2022 where Hon'ble HC, Kolkata has held that the Tribunal should have gone deeper in cases of manifested large scam.

iii. Whether in the facts and in the circumstances of the case the tribunal was justified in law in not considering the settled position of law as held in the decision of Hon'ble Apex Court in the case of Hukum Chand Mills Limited Versus CIT in Civil Appeals Nos. 411 to 415 of 1965 that the tribunal has jurisdiction to frame the question raised for the first time since section 254 (1) and section 255 (6) of the Act contemplates the power exercisable by the Tribunal which are akin and equal to that of the power exercisable by the assessing authority which in the instant case the tribunal had not exercised such power which thereby giving rise to perversity for noncompliance?

iv. Whether the Learned Tribunal has committed substantial error in law, by ignoring that the Director of the assessee company has retracted his statement on oath on 22.03.2016 by filing an affidavit after 2 years from giving the said statement on oath after initiation of proceedings, hence the retraction is nothing but an afterthought and should not have been acceded to?”

We have heard Mr. Soumen Bhattacharjee, learned senior standing counsel for the appellant/revenue and Mr. Abhratosh Majumdar, learned senior advocate for the respondent/assessee.

The assessee filed its return of income declaring total income as 'nil' which was processed under Section 143(1) where a refund of Rs.22,83,940/- was raised and issued. The case was selected for scrutiny and statutory notices under Sections 143(1) and 142(1) were served on the assessee calling for particulars. In compliance with the same the authorised representative of the assessee appeared from time to time and explained the return and submitted the details called for. Upon perusal of the accounts and details, the Assessing Officer noted that the assessee is a NBFC involved in trading and investment in shares. Interest on loan was received during the relevant period to the tune of Rs.2,45,85,201/- and the net result of trading in shares is loss of Rs.1,97,94,148/-. After deducting other business expenditures, the net income was arrived at Rs.14,48,008/- which was fully set off against brought forward loss and the assessee company filed its return for the assessment year under consideration showing 'nil' income. On going through the details, the Assessing Officer found that the assessee company acquired its loss from share trading to set off its return income to escape tax and further also from that the entire trading in shares was in the script of private limited companies which was treated off market. In the meantime, information was received from the Directorate of Investigation, New Delhi that a search and seizure operation was carried out in the premises of KLJ Group and consequential survey had taken place in the office of the assessee at Kolkata. The director of the assessee Rajesh

Kumar Surana had given a statement on oath where he admitted that the assessee company's entry operator had involved in giving bogus entry for purchase and sale of investment, share application etc. against commission on total transaction amount. With this fact a show-cause notice was served on the assessee setting out all the relevant particulars and the assessee company was informed that the information shows that the assessee company does not have any real business activity and the loss shown from trading in shares is bogus. The assessee was directed to show-cause as to why the share trading loss of Rs.1,97,94,148/- should not be disallowed as bogus loss. Sufficient time was granted to the assessee to respond to the show-cause notice. The assessee though received the show-cause notice did not submit any reply and, therefore, the Assessing Officer proceeded and completed the assessment by passing an order dated 16.12.2016 under Section 143(3) of the Act.

The assessee filed an appeal before the Commissioner of Income Tax (Appeals), Lucknow-3. The appeal was dismissed by an order dated 24.4.2023 and from paragraph 4.1 of the said order it is evidently clear that the assessee did not participate in the proceedings and despite several opportunities granted by the appellate authority, the assessee did not appear before the appellate authority. Thus, the conduct of the assessee before the Assessing Officer as well as before the appellate authority would clearly show that they were avoiding the proceedings despite knowing the consequences. In such a factual background the appellate authority considered all the grounds raised by the assessee and dismissed the appeal. The assessee filed an appeal before the Tribunal

challenging the order passed by the CIT(A), Lucknow-3. The Tribunal has allowed the appeal by the impugned order for which the revenue is aggrieved.

At the very outset, we need to point out that the order passed by the Tribunal is absolutely perverse and calls for interference. We support such conclusion with the following reasons :

The Tribunal has rendered a finding that the assessee has filed evidences before the Assessing Officer as called for during the course of assessment proceedings. This is an absolutely factually incorrect statement since the response of the assessee was to the statutory notices issued under Section 143(2) and 142(1) of the Act. After the assessee responded and furnished details, a show-cause notice was issued proposing to treat the share trading loss as a bogus loss. Admittedly, the assessee could not substantiate with documents that the share trading loss was a genuine loss. The assessee did not appear before the Assessing Officer. Therefore, this aspect of the matter has been lost sight of by the learned Tribunal. Apart from that, the learned Tribunal has stated that the statement given by the director on 22.3.2016 has been retracted by filing an affidavit. Admittedly, the alleged retraction is beyond the period of two years, that too after the assessment was completed by order dated 16.12.2016. Therefore, the Tribunal ought to have taken note of the legal position and rejected such retraction as an afterthought. Even assuming that the learned Tribunal wanted to examine the retraction then the learned Tribunal should have gone into the facts and found as to whether the retraction was a valid retraction. No such exercise was done by the learned Tribunal rendering the impugned order as totally erroneous. That apart, the learned Tribunal has stated that

the assessee has not been given an opportunity of cross-examination. There is nothing on record to indicate that the assessee made such a request for cross-examination. Therefore, we are at a loss to understand as to how the learned Tribunal could have accorded to such a finding which is contrary to facts. Thus, the impugned order being perverse and outcome of non application of mind, without appreciating the factual background and the non-cooperative attitude of the assessee requires to be set aside.

Accordingly, the appeal filed by the revenue is allowed. The impugned order is set aside and the order passed by the Assessing Officer dated 16.12.2016 as affirmed by the CIT(A) dated 24.4.2023 are restored. Consequently, the substantial questions of law are answered in favour of the revenue.

(T.S SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)