

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

ITAT/69/2025
IA NO: GA/1/2025, GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
M/S. BOSCON LEATHER PRODUCTS PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 23RD APRIL, 2025

Appearance:
Mr. Amit Sharma, Adv.
...for Appellant
Mr. Ramesh Kumar Patodia, Adv.
Ms. Megha Agarwal, Adv.
...for Respondent

THE COURT: There is a delay of 286 days in filing the present appeal.

We have heard Mr. Amit Sharma, learned standing counsel appearing for the appellant/department and Mr. Ramesh Kumar Patodia, learned counsel appearing for the respondent/assessee, who has vehemently opposed the delay in filing the appeal.

Considering the fact that this appeal has been filed under Section 260A of the Income Tax Act, 1961 wherein the Court is required to consider whether any substantial question of law arises for consideration, we deem

it appropriate to exercise discretion in favour of the appellant/department and condone the delay in filing the appeal. Accordingly, the application GA 1/2025 is allowed.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 7th November, 2023 passed by the Income Tax Appellate Tribunal, “C” Bench, Kolkata (Tribunal) in ITA No.822/Kol/2023 for the assessment year 2012-13.

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

“ i) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to delete the entire addition of Rs.29,19,553/- on account of bogus purchases despite the fact that the respondent assessee has failed to establish the genuineness of the purchases?

ii) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to delete the addition made by the Assessing Officer by ignoring the search and seizure operation conducted against the bogus bill provider Shri Sanjiw Kumar Singh as well as the incriminating documents and the statements of various related parties which establish beyond doubt that the respondent assessee availed accommodation entries in the form of bogus purchases thereby giving rise to the vice of perversity in the decision making process.”

We have heard Mr. Amit Sharma, learned standing counsel appearing for the appellant/revenue and Mr. Ramesh Kumar Patodia, learned counsel for the respondent/assessee.

The assessee preferred the appeal before the learned Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) dated 14th June, 2023 for the assessment years 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 respectively. Since the facts and the issues are identical for all the assessment years, the learned Tribunal took up the case relating to the assessment year 2012-13 as the lead case and proceeded to decide the matter.

Before we examine the correctness of the order passed by the learned Tribunal, we need to mention that the order passed by the Appellate Authority dated 14th June, 2023 at the first blush appears to be a very reasoned and an elaborate order. However, on a closer scrutiny we find that all that the appellate authority has done is to extract the relevant portions of the written submissions, the reasons for reopening as given by the Assessing Officer, the written submissions filed by the assessee before the Appellate Authority and ultimately, in two paragraphs have rejected the appeal without dealing with any of the contentions raised by the appellant either in the grounds of appeal or in the written submissions. In fact, this would have been sufficient grounds for the Tribunal to set aside the impugned order on the ground of non-application of mind.

Be that as it may, the learned Tribunal has examined the merits of the case, taken note of the decision of the Hon'ble Supreme Court in *CIT vs. M/s. Oden Builders (P) Ltd. in Review Petition (c) Diary No.22394/2019 in*

Civil Appeal Nos.9604-9605 of 2018 as well as the decision of this Court in the case of *Swadeshi Commercial Co. Ltd. vs. CIT (ITA NO.219 of 2001) dated 18.12.2008*. The issue was whether the estimation of gross profit as done by the Assessing Officer was justified. Admittedly, the Assessing Officer did not reject the books of accounts submitted by the assessee or any other documents but proceeded to accept the gross profit as declared by the assessee for the three previous assessment years namely, 2009-10, 2010-11 and 2011-12 at 9.18% along with that the Assessing Officer has added 14.64% being the total percentage of bogus purchase. The Assessing Officer could not have done so neither he should have rejected the books of accounts and, consequently, rejected the gross profit determined at 9.18% and then proceeded to determine the gross profit based on documents and records.

Furthermore, the appellate authority has also noted that the assessee has responded to the show-cause notice by submitting reply dated 3.9.2018 and filed the balance-sheet, profit and loss account, tax audit report and also the details of purchases of finished leather for manufacturing of various types of products from three vendors. They have also filed the ledger copy for transaction made with the parties along with copy of bills, bank statement, delivery challan of each such transaction. The first appellate authority has not gone into these aspects though it has noted the submissions made by the assessee but solely proceeded on the basis that those suppliers were shell companies.

That apart, the Assessing Officer has invoked section 69C of the Act for making the addition. In our view, section 69C of the Act would have no application

to the facts and circumstances of this case and would apply only when the assessee has no explanation about the source of expenditure or part thereof or the explanation, if any offered by the assessee, in the opinion of the Assessing Officer is not satisfactory.

In the instant case the assessee did offer an explanation which has not been outrightly rejected by the Assessing Officer not dealt with by the appellate authority. Therefore, the tribunal took upon itself the task of examining the factual position and has come to the conclusion that the entire addition was made on surmises and conjunctures and, accordingly, allowed the appeal filed by the assessee for all the assessment years.

Thus, we find there is no question of law, much less substantial question of law, which arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

Consequently, the applications stand dismissed.

(T.S. SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)