ORDER OD-18

ITAT/132/2025
IA NO:GA/2/2025

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

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
M/S. ROYAL TOUCH FABLON PRIVATE LIMITED

BEFORE:
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR
Date : 3rd December, 2025.

Appearance:

Mr. Prithu Dudhoria, Adv.
…for Appellant
Mr. S. M. Surana Adv.
Mrs. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
…for Respondent

The Court: Learned counsel appearing for the appellant/revenue suggests the following questions arise for consideration:-

a) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in quashing the reassessment order without considering the fact that the reopening was made on the basis of specific and credible information from the investigation wing of the department ?

b) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in quashing the reassessment order without considering the established legal principles as laid down by the Hon'ble Delhi High Court in the case of Rakesh Gupta Vs. CIT (2018) 405 ITR 213?

c) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in deleting the addition of Rs.3,53,93,269/ on account of unexplained cash credit U/s. 68 of the I.T. Act without considering the fact that income escaping assessment in reasons recorded has also been considered as unexplained and taken due cognizance of ?

d) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by not following the judicial principles laid down in the case of CIT Vs. Nova Promoters and Finlease (P) Ltd., (2012) 342 ITR 169 (Del.) ?

e) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in not following the judicial principles laid down in the matter of Pr. CIT2, Kolkata (C)-2, Kolkata Vs. M/s. BST Infratech Ltd. in (2024) 161 taxmann.com 688 (Calcutta) dated April 23, 2024, which is an earlier decision of Hon'ble High Court having a Precedence value ?

f) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by not considering the judicial principles laid down in the matter of Pr. CIT Vs. Swati Bajaj, reported in (2022) 139 Taxmann.com 352 (Cal)/(2022) 446 ITR 56 (Cal) wherein the Hon'ble High Court at Calcutta laid down guidelines on the manner in which the allegation against the assessee has to be considered ?

g) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by not considering the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT (Central)-1, Kolkata Vs. NRA Iron & Steel Pvt. Ltd. (412 ITR 161) (2020) 117 taxmann.com 752 (SC) ?

h) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by not considering the principle which has been laid down by the Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT (1995) 214 ITR 801 (SC) ?

i) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law by not considering the principle which has been laid down by the Hon'ble Supreme Court in the case of CIT Vs. Durga Prasad More [1971] 82 ITR 540 (SC) ?

j) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in providing his verdict in favour of the assessee where the issue of accommodation entries is the primary ingredient of this case and the same is covered by Exceptional clauses as enumerated in para 3.1(h) of CBDT Circular 05/2024 dated 15.03.2024 ?

Heard learned counsels for the parties. Perused the assessment order as well as the Tribunal's order.

The learned Tribunal's order dated 15th October, 2024 states that :-

"7. After hearing the rival contentions and perusing the material on record, we find that the case was reopened by the AO u/s. 147 of the Act by issuing notice u/s. 148 of the Act on 27.03.2021. We note that the assessee vide e-mail to the department on 30.03.2021 stated that the return filed originally may be treated as return filed in response to notice u/s. 148 of the Act. We also note that notice u/s. 143(2) was issued on 18.01.2022. Now, the issue before us whether the additions made by the AO were without jurisdiction for the reason that no addition was made in respect of the item of income referred to in the reasons recorded which according to the AO has escaped assessment. We have considered the facts carefully as placed before us and find that in this case the AO has mentioned in the reasons recorded that assessee made a non-genuine profit of Rs.4.45,17,500/- by trading in derivatives on BSE which resulted into the escapement of income whereas no addition was made in respect to profits because the assessee has suo moto disclosed the entire profit in the return of income. However, the AO added Rs 3,53,93,269/- which was calculated by reducing profits on the derivatives of Rs.4,45,03,881/- from the total value of derivative credits of Rs.7,98,97,150/-. It is pertinent to note that there is no consideration while trading in derivatives as the net amount of profit and gain is shown in the assessee's accounts. Thus, it is clear from the above that no addition has been made in respect to the profits made on account of derivative trading on BSE platform. Therefore, in our opinion, no other addition could be made. The case of the assessee finds support from the decision of Hon'ble jurisdictional High Court in the case of M/s. Infinity Infotech Parks Ltd., wherein the Hon'ble Calcutta High Court has held by following the decision of Hon'ble Bombay High Court in the case of

CIT Vs. Jet Airways (I) Ltd. [2011] 331 ITR 236 and also Hon'ble Delhi High Court decision in the case of Ranbaxy Laboratories Vs. CIT 336 ITR 136 (Del.) that where the income the escapement of which was the foundation for recording of reasons to believe, is not assessed or reassessed in the order u/s. 147, then it is not mere opened to the AO to independently assess any other income, which comes to his notice subsequently during the course of re-assessment proceedings. Similar ratio has been laid down by the Coordinate Bench in Ganesh Steel & Alloys (supra) after following the decision of the Hon'ble Bombay High Court and, therefore, we are inclined to quash the reopening proceeding as well as the consequent order framed by the AO. Since we have allowed the appeal of the assessee on legal issue, the other grounds raised on merit and legal issues are not being adjudicated at this stage and the same are being left open to be decided if the need arises."

We do not find any substantial questions of law arising in this appeal for consideration as the facts of trading in derivatives and net amount of profit and gain is only shown in the assessee's accounts.

In view of the above, the appeal is dismissed. The application (IA NO:GA/2/2025) also stands dismissed.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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