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ITAT/279/2024
IA NO: GA/1/2024, GA/2/2024
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX
CENTRAL 2 KOLKATA
VS
SAMRAT FINVESTORS PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE RAJARSHI BHARADWAJ
-AND-
The Hon'ble JUSTICE UDAY KUMAR
Date: 17th November, 2025.

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

Mr. Pranabesh Sarkar, Adv.
. . .for the respondent.

The Court: Heard learned counsel for the parties and perused the order of the Tribunal dated 11.01.2024. The relevant paragraphs of the said order are as follows:

“38. Respectfully following the above decision of this Tribunal in the case of Raigarh Jute & Textile Mills Ltd. vs. ACIT (supra), which is squarely applicable on the facts of the instant case of assessee i.e., M/s. Gateway Financial Services Ltd., we find that the alleged loss has been incurred by the assessee in the regular course of its business. We also note that the statement of various persons

recorded by the AO/investigation wing/search team in the course of other proceedings as well as the report of the Kolkata investigation wing, there is no reference to a direct evidence indicating that the transactions in question is in the nature of accommodation entry or for arranging bogus loss. Thus, the addition/disallowance made by the assessee is merely on the basis of preponderance of probabilities. Therefore, in the present case, when the statements and investigation report relied upon by the AO has not been given to the assessee for the purpose of cross-examination as well as rebuttal, we in view of the above decision are inclined to hold that the alleged loss being genuine loss from share trading incurred by the assessee in regular course of business, deserves to be allowed. Thus, impugned disallowance is uncalled for.

44. Thus, to conclude we hold that firstly the principles of natural justice have been violated while carrying out the assessment proceedings in the case of the assessee(s) since no opportunity for cross-examination was provided for those persons whose statements have been relied upon by the assessing officer for making the alleged additions. Secondly, there is no direct evidence referred to by the assessing officer or in the report of the investigation Wing that the assessee(s) have made arrangements with the entry operators/company owners for carrying out the alleged transactions. Thirdly, additions made by the assessing officer are merely based on a theory called preponderance of probability that in some type of cases prices are rigged up and down by the entry operators in order to provide accommodation entry to various persons in the form of Long term capital gain and though, the assessing authority can apply preponderance of probabilities in some cases on account of surrounding circumstances but so far as the cases on hand are concerned, we notice that firstly some observations were made by the SEBI

regarding some fishy transactions carried out in case of few companies. Based on such primary information, the income tax department has carried out extensive enquiries and search and surveys in the case of various entry operators and alleged companies and based on such statements, a theory was established regarding such accommodation/bogus entries in the form of capital gains. However, since in the case of the assessee, SEBI at a later stage has intensively carried out the investigation on the fact of the assessee(s) along with other persons as referred in the order of the SEBI (extracted supra), and after a detailed investigation and examination of records exonerated, the assessee(s) from the charges levelled in the show cause notice issued to them. Therefore, when the assessee(s) have been exonerated and the charges against them have been waived and the transactions of purchase and sale of equity shares carried out by them have been found to be genuine, the theory of preponderance of probabilities is ruled out in the case of the present assessee(s). Thus, when the transactions giving rise to the long term capital gain have been found to be genuine, and as per rules and regulations of SEBI, the finding of the ld. CIT(A) deserves to be set aside and the impugned additions in case of assessee(s) in appeal before us are uncalled for.

11.1 In the case of Pr. CIT vs. Renu Aggarwal (Supra), the Hon'ble Apex Court has dismissed the special leave petition filed by the revenue affirming the decision the Hon'ble High Court of Allahabad in ITA No. 44 of 2022 which in turn has upheld the decision of the tribunal in ITA No.204/Lkw/2020 A.Y. 2014-15 & anors. The Hon'ble Apex Court however, kept the legal issue open. We have perused the decision of the tribunal wherein the following findings of fact were recorded:

“The above findings recorded by ld. CIT(A) are quite exhaustive whereby he has discussed the basis on which the Assessing Officer had made the additions. While allowing relief to the assessee, the ld. CIT(A) has specifically held that there is no adverse comment in the form of general and specific statement by the Pr. Officer of stock exchange or by the company whose shares were involved in these transactions and he held that Assessing Officer only quoted facts pertaining to various completely unrelated persons whose statement were recorded and on the basis of unfounded presumptions. He further held that the name of the appellants were neither quoted by any of such persons nor any material relating to the assessee was found at any place where investigation was done by the investigation Wing. The ld. CIT(A) relying on various orders of Lucknow Benches and other Benches has allowed relief to the assessee by placing reliance on the evidences filed by the assessee before Assessing Officer. I do not find any adversity in the order of Ld. CIT(A) specifically keeping in view the fact that Lucknow Benches in a number of cases after relying on the judgment of Hon’ble Delhi High Court in the case of Krishna Devi and others had allowed relief to various assesses.”

11.2. The Hon'ble High Court, after taking into the concurrent findings of the ld. first appellate authority and the tribunal, held that no substantial question of law is involved in the appeal of the revenue and accordingly dismissed the appeal of the Revenue. In the present case before us also there is no adverse comment in the form of general and specific statement by Pr. Officer of the Stock Exchange or by the company whose shares were involved in the above said transactions. We note that the AO only referred to the report of the

investigation wing which was based upon the statements of several persons who were wholly unrelated. The same is the position with regard to report of the SEBI. In the instant case also the name of the assessee was neither quoted by any of such persons nor any materials relating to the assessee as found at any place where investigation/searches were carried out the Wing. Thus find the above decision squarely applies to the instant case.

11.3. We note that the Hon'ble High Court of Orissa in the case of PCIT Vs Dipansu Mohapatra (supra), has held that tribunal was justified in allowing assessee's claim u/s 10(38) of the Act where the assessee has filed the details of purchase and sales of shares alongwith contract notes for purchase and sale, D-mat A/C and bank statement and furthermore no incriminating materials were found against the assessee in the survey conducted in the premises of the assessee and therefore the AO could not deny the claim u/s 10(38) of the Act merely by relying on the statements of accommodation entry providers which were recorded much before the date of survey. In the present case before us the facts of the assessee are on better footing even as there is no survey on the assessee's premises and AO relied on the statements of entry providers which were recorded long ago. Besides there was no incriminating materials against the assessee found even in the premises of entry operators/stock brokers. Therefore this case also squarely applies to the facts of the case.

12. In view of the above discussion and in the given facts and circumstances of case, we are inclined to hold that the Assessing Officer has failed to carry out any independent investigations/enquiries into the evidences filed by the assessee and has rejected the claim by the assessee qua loss from share trading in F&O segment only on the basis of surmises and conjectures and

relying on the statements of entry operators who never named the assessee and their statements were recorded long before. Therefore, we set aside the order of first appellate authority and direct the Assessing Officer to delete the allow the loss of Rs.3,98,50,208/-. The first issue raised by the assessee is allowed.”

Perusal of the Tribunal’s order and the questions of law suggested by the department, it is clear that no substantial questions of law arises from the Tribunal’s order. Tribunal has rightly confirmed and reversed the disallowance of Rs.3,98,50,208/- as made by the assessing officer on account of alleged bogus loss in share trading and F & O segment.

Thus, the appeal preferred by Principal Commissioner of Income Tax (Central) Kolkata-2, Kolkata 110 is dismissed. Related application being GA 2 of 2024 is also dismissed.

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)

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