

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

ORIGINAL SIDE

ITAT/280/2024
IA NO: GA/1/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 5 KOLKATA
VS
NALINI KEJRIWAL

BEFORE :

THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM

And

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

Date : 17th July, 2025

Appearance :

Mr. Amit Sharma, Adv.
..for the appellant.

Mr. Saumya Kejriwal, Adv.
Ms. Ananya Rath, Adv.
Mr. Navin Mittal, Adv.
Mr. Debarghya Banerjee, 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 May 20, 2024 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal) in ITA/672/Kol/2013 for the assessment year 2015-16.

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 Hon'ble ITAT has erred on facts and in law in deleting the addition of Rs. 1,01,98,748/- made by the AO on account of sale of penny stock of M/s. GCM Securities Ltd. u/s. 68 based on the report of the DIT (Investigation), considering it as double addition even when it was evident that the Assessing Officer had added it only once as per the provisions of Section 68 of the I.T. Act, 1961 and the assessee's offer of the same even after acknowledging the scrip as penny stock as income from other sources was

against the provisions of the Act, thereby rendering the ITAT's order perverse ?

ii) Whether the Learned Tribunal erred in law in deleting the addition made by the Assessing Officer relating to payment of commission amounting to Rs. 2,47,893/- on the premise that such addition was made on assumption and at the same time the Learned Tribunal stated that it has not gone into the question as to whether the shares of M/s. GCM Securities Ltd. were penny stock ?

iii) Whether on the facts and in the circumstances of the case the Learned Tribunal erred in law in deleting the disallowance of claim of Rs. 91,23,904/- as bad debts written off by not taking into consideration the fact that the said claim was in contravention to the provisions enshrined under Section 36(2) of the Income Tax Act, 1961 as the transactions were not declared in the return of income and nature and amount of transactions were not verifiable even after considering the reply of NSEL as well as the fact that transaction on NSEL was found to be scam which is also noted by the Learned Tribunal ?

We have elaborately heard Mr. Amit Sharma, learned standing counsel for the appellant/revenue and Mr. Saumya Kejriwal, learned advocate for the respondent/assessee.

We have elaborately heard Mr. Amit Sharma, learned standing counsel appearing for the appellant/department and Mr. Soumya Kejriwal, learned counsel appearing for the respondent/assessee.

The assessee filed the appeal before the Tribunal challenging the order passed by the Appellate authority dated 11.5.2023 affirming the assessment order dated 29.12.2017 passed under section 143(3) of the Act. Learned Tribunal considered the factual position at the first instance and has pointed out that without going into the controversy as to whether the shares of M/s. GCM Securities Ltd. were penny stock or whether the assessee was bonafide

purchaser of the said shares, noted that the assessee himself has offered the income from the sale of the said shares under the head "Income from other sources". Therefore, the question which fell for consideration before the learned Tribunal was whether same income can be taxed twice. Furthermore, it is relevant to note that the assessee has offered the said gains/income as income from other sources and the slab of tax under section 68 is from at which the assessee has offered the said income after set off of losses and even for the year under consideration there was no bar to set off losses against the income assessed under section 68 of the Act.

Therefore, in our view, the learned Tribunal rightly concluded that the Assessing Officer was not justified in making the double addition of the same amount.

The next issue before the learned Tribunal was with regard to the addition of Rs.2,47,898/- made by the Assessing Officer on the assumption that the assessee might have paid some commission to earn bogus LTCG. The learned Tribunal set aside the said addition on the ground that it was purely on assumption and therefore held the addition to be not sustainable and accordingly deleted the same.

We find no grounds to interfere with the said finding passed by the learned Tribunal, which has tested the factual position and arrived at a conclusion.

The third issue which fell for consideration was with regard to disallowance of losses on account of bad debts. The learned Tribunal has elaborately considered the submissions made by the assessee and has recorded a finding that the revenue could not rebut any of the contentions raised by the assessee. That apart, the assessee has offered the aforesaid loss during the course of his business in derivative segment since the amount was paid by the assessee and commodity was not delivered to the assessee due to some scam in the National Stock Exchange Limited and the amount was treated as bad debts written off. Therefore, the assessee was right in claiming the same as loss on account of bad debt written off. Furthermore, during the year under consideration there was no bar to set off losses against income even assessed under section 68 of the Act. With this reasoning, the learned Tribunal deleted the addition.

Thus, we find the entire matter to be factual and no questions of law, much less substantial questions of law, arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay application, IA/GA No.1 of 2024, is also dismissed.

(T.S SIVAGNANAM, C.J.)

(CHAITALI CHATTERJEE (DAS), J.)