

ORDER SHEET

GA NO.3250 OF 2015
WITH
ITAT NO.139 OF 2015
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION(INCOME TAX)
ORIGINAL SIDE

ASIAN FINANCIAL SERVICES LTD.

Versus

COMMISSIONER OF INCOME TAX-3 KOLKATA

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE INDRAJIT CHATTERJEE

Date : 25th February, 2016.

MR.J.P.KHAITAN,SR.ADVOCATE, MR.P.JHUNJHUNWALA,ADVOCATE FOR APPELLANT

The Court : The questions raised by the assessee are as follows:-

“(a) *Whether the Tribunal was justified in law in reversing the order of the Commissioner of Income Tax (Appeals)*

and in upholding the disallowance of Rs.9,79,873/- made by the Assessing Officer under section 14A of the Income Tax Act, 1961 as expenditure incurred in relation to the dividend income of Rs.33,288/- and its purported findings in that behalf are arbitrary, unreasonable and perverse ?

- (b) Whether on a true and proper interpretation of the Explanation to section 73 of the Income Tax Act, 1961, the Tribunal was justified in law in holding that the loss of Rs.3,24,76,185/- incurred in eligible transactions within the meaning of proviso (d) to section 43(5) not involving any purchase or sale of shares as such was speculation loss ?*
- (c) Whether and in any event, the appellant having earned profit in its business of purchase and sale of shares, the Tribunal should have directed the aforesaid loss in eligible transactions to be set off against such profit ?*

With regard to the first question, Mr.Khaitan submitted that the tax free income earned by the assessee is a meagre sum of

Rs.33,288/-. He added that there can be no dispute that the expenditure incurred in relation to the exempt income cannot be deducted from the taxable income. Therefore, the assessing officer was within his jurisdiction to determine the amount of expenditure incurred by the assessee for the purpose of earning exempt income. He was entitled to resort to Rule 8(D) in case he was not satisfied with the correctness of the claim put forward by the assessee in respect of such expenditure.

The assessing officer, according to him, did not take recourse to Rule 8(D) because that would have led to deduction of a very high amount. What he, therefore, did was to disallow a sum of Rs.9,79,873/- which is aggregate of Rs.56,162/- on account of service tax + Rs.11,587/- on account of D-mat charges + Rs.5,85,124/- on account of administrative expenses and Rs.3,27,000/- on account of salaries and bonus. He contended that the administrative expenses and salaries and bonus in its entirety could not have been for the purpose of earning the exempt income. Therefore, the CIT had reduced the sum of Rs.9,79,873/- by 50% but the learned Tribunal without any reason restored it to 100%.

With regard to the second and the third questions, Mr.Khaitan submitted that the loss incurred by the assessee to the tune

of Rs.3,24,76,184/- was on account of settlement of future and option. This loss has to be treated as a business loss under the proviso to section 43(5) of the Income Tax Act. Once it is deemed to be a business loss on the basis of the proviso appended to section 43(5), the question of applying section 73 or the explanation thereto for the purpose of refusing the loss to be set off from the business income is palpably wrong. He submitted that the judgment of the Delhi High Court relied upon by the learned Tribunal does not lay down good law. According to him, the Delhi High Court erred in holding that dealing in derivatives is also speculation within the meaning of section 73.

Let the matter appear in the list on Monday(29-02-2016).

(GIRISH CHANDRA GUPTA, J.)

(INDRAJIT CHATTERJEE, J.)

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