

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 07.02.2013

+ ITA No.26/2013

COMMISSIONER OF INCOME TAX: DELHI-VIII ... Appellant

versus

ASHOK MITTAL

... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr Abhishek Maratha, Sr. Standing Counsel.
For the Respondent : Mr Mohit Chaudhary and Mr. R.K.Srivastava,
Advocates.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

R.V. EASWAR, J

The revenue has proposed the following questions, stated to be substantial questions of law, in this appeal filed under section 260A of the

Income Tax Act, 1961:-

“A. Whether the ITAT was correct in the eyes of law in affirming the order of the CIT (A) directing the AO to re-compute the income of the assessee in order to give the appeal effect by first setting-off the carry forward speculative losses against the speculative profit and then set-off the business losses to the extent of the balance speculation profit and other income?”

B. Whether the impugned order passed by the ITAT is perverse both in facts and law?”

2. The appeal arises out of the order passed by the Income Tax Appellate Tribunal on 11.5.2012 in ITA No.4196/Del/2011 relating to the assessment year 2000-01. In the return filed on 31.10.2000, the assessee set off the brought forward loss from speculation business quantified at ₹14,43,625/- and ₹75,39,186/- for the assessment years 1999-2000 and 1998-1999 respectively against the current year's speculation profit of ₹1,46,56,512/-. In the assessment order passed under section 143(3) on 31.3.2003, the AO disallowed the set off claimed by the assessee on two grounds. The first ground was that the assessment orders for the assessment years 1999-2000 and 1998-1999 were silent on the issue of carry forward of the speculation losses. The second ground was that the assessee did not furnish the particulars of share trading so as to arrive at the true profits from the speculation business in the current or earlier years.

3. On appeal the CIT(Appeals) by order dated 14.8.2007 directed the AO to allow the set off of the speculation losses of the assessment years 1998-1999 and 1999-2000 against the speculation profits for the assessment years 2000-2001 as claimed by the assessee.

4. The AO gave effect to the order of the CIT(Appeals) and in doing so first adjusted the current year's loss from all the businesses of the assessee against the current year's profits. The assessee had suffered loss in the business carried on in the name and style of M/s Ashok Mittal & Co.; M/s Carrara Marbles & Granite Ind. and M/s Light and Lighting. The AO adjusted these losses against the speculation profits of ₹1,46,56,512/-. This left a balance speculation profit of ₹19,42,970/-. It was against this balance that the brought forward speculation losses were adjusted. After this adjustment, the aggregate of the brought forward speculation losses came to ₹1,01,39,841/- which were allowed to be carry forward to the subsequent years. This method of adjustment of the brought forward speculation losses was disadvantageous to the assessee in the sense that under sub-section (2) of section 73 of the Act, the carried forward losses can be set off only against the speculation profits and not against other profits. Moreover the speculation loss could not at that time be carried forward for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed. Thus the method of adjustment adopted by the AO was disadvantageous to the assessee in whose computation in the return of income, the entire

brought forward losses stood adjusted against the speculation profit for the current year.

5. The assessee therefore filed an application under section 154 of the Act seeking rectification of the order passed by the AO on 14.12.2007, reiterating his claim in the return of income and asking for the rectification of the order. The AO, by order dated 20.6.2008 rejected the application stating that the method adopted by him with regard to the adjustment of the brought forward speculation losses was in accordance with the provisions of section 71 of the Act.

6. Aggrieved, the assessee carried the matter in appeal before the CIT (Appeals). He noted that the assessee's method of adjustment of the brought forward speculation losses had the approval of the judgments of the Calcutta High Court in *CIT vs. New India Investment Corporation Ltd.* (1994) 205 ITR 618 and *CIT vs. Pradeep Kumar Todi* (2009) 181 *Taxman* 29=(2010) 325 ITR 96 and a judgment of the Bombay High court in the case of *Navnitlal Ambalal vs. CIT* (1976) 105 ITR 735. He noted that in these judgments the Calcutta and Bombay High Courts have applied the circular No.23D of 1960 dated 12.9.1960 of the Central Board of Direct Taxes which conceded that speculation losses carried forward

from previous years may be first set off against the speculation profits before being set off against any other current profits, if that procedure is more beneficial to the assessee. The CIT(Appeals) also noted that the courts have also recognized that though the circular was issued in the context of section 24 of the 1922 Act, it has not been withdrawn and therefore held the field even under section 73 of the 1961 Act. In this view of the matter, he upheld the assessee's method of adjusting the brought forward speculation losses against such speculation profits. This method was found by the CIT(Appeals) to be more advantageous to the assessee. He thus allowed the appeal.

7. The revenue carried the matter in appeal before the Tribunal. The Tribunal after noticing the view taken by the income tax authorities dismissed the appeal by observing as under:-

“14. We have heard the rival contentions in light of the material produced and precedent relied upon. We find that Ld. Commissioner of Income Tax (Appeals) has adopted the correct approach. As per the Board Circular and decision of Hon'ble Calcutta High Court referred by the Ld. Commissioner of Income Tax (Appeals), it is evident that carried forward speculation losses have to be adjusted against the speculation profit before allowing any other loss to be adjusted against those profits and other incomes. The Board Circular though issued in the context of Section 24 of the 1922 Act, has been held by the Courts hold the field. We do not find any infirmity in the order of the Ld. Commissioner of Income Tax (Appeals). Accordingly, we uphold the same.”

8. Having considered the matter, we are of the view that there is no merit in the appeal and no substantial question of law arises. The Tribunal has applied the well-settled position that circulars issued by the CBDT relaxing the rigour of the provisions of the Act are binding on the AO and others who are executing the Income Tax Act (see: The Constitution Bench judgment of the Supreme Court in the case of *Navnit Lal Zaveri vs. K.K.Sen (1965) 56 ITR 198*). There is no dispute that the circular (supra) has not been withdrawn and therefore would still govern the treatment to be given to the brought forward speculation losses though it was issued under the 1922 Act. It is not the case of the revenue that the provisions of section 24 of the old Act and section 73 of the new Act are materially different and therefore the circular can have no application under the new Act. The order of the Tribunal is in conformity with the legal position that beneficial circulars issued by the CBDT are binding on the income tax authorities. It is not also the case of the revenue that the working adopted by the AO was in fact more beneficial to the assessee.

9. In the above circumstances the appeal is without merit. No substantial question of law arises for our consideration. The appeal is accordingly dismissed with no order as to costs.

R.V.EASWAR, J

BADAR DURREZ AHMED, J

FEBRUARY 07, 2013

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