

ITA No. 620 of 2008  
GA No.2589 of 2008

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ/Civil Appellate/Ordinary Original Civil Jurisdiction

ORIGINAL SIDE

*COMMISSIONER OF INCOME TAX [CENTRAL]-II, KOLKATA*  
*Versus*  
*M/S. ALPINE INVESTMENTS*

BEFORE:

The Hon'ble JUSTICE PINAKI CHANDRA GHOSE

The Hon'ble JUSTICE SANKAR PRASAD MITRA

Date : 26th August, 2008.

The Court : We are satisfied with the grounds made in the petition for condonation of delay. Hence, the delay in filing the appeal is condoned and we allow the application being GA No.2589 of 2008. GA No.2589 of 2008 is thus disposed of.

It appears that in this matter the Tribunal has extensively dealt with the matter. The brief facts of the order so passed by the Tribunal are reproduced hereunder :

"Brief facts of the case are that a search and seizure operation was conducted at the office premises of M/s. M.K. Shah Exports Ltd. at 'M.K.House', 2/2, Justice Dwarkanath Road, Kolkata-700 020 on 24.8.2000, wherein the assessee firm also enjoys the common office area. In the course of search certain documents were found and seized. During the block assessment proceedings of M.K. Shah Exports Ltd., the assessee firm owned up certain documents, which were seized. During that search a statement of Mr. Kamlesh A.Rupani was recorded u/s 132[4] of the Income Tax Act on 24/25.08.2000. This statement included question and answers regarding

share transactions of the assessee firm. In the said statement Sri Kamlesh a. Rupani stated that the share trading loss was not a genuine one. On 25.10.2002, Mr. Kamlesh A. Rupani was cross-examined by Mr. Mukundray K. Shah, one of the partners of the assessee firm and during that cross examination, Mr. Rupani averred that his earlier statement recorded on 24/25.08.2000 was given by him under duress and coercion. Mr. Rupani further submitted during such cross-examination that during recording of his statement u/s 132[4] at the time of search on 24/25.08.2000, he had produced contract notes, bills etc. in support of the share trading transactions before the search officials but were not considered by them. Based on Mr. Rupani's deposition, proceedings u/s 158BD were initiated through notice dated 10.12.2002 and assessment u/s 158BD/158BC[c]/143[3] was completed on 31.12.2004. In the month of February 1999, the assessee firm had bought and sold 52,000 equity shares of DSQ Software through broker M/s. Mehta & Ajmera which resulted into a loss of Rs.57,31,440/-. During the assessment proceedings the assessee firm produced before the AO the books of accounts, bills, contract notes, bank statements in support of the share trading transactions. It was evident from the books and the banks statements that the transactions in shares were carried out through recognized stockbroker and through regular banking channel duly supported by contract notes and bills. Further the AO summoned the brokers M/s. Mehta & Ajmera and recorded the statement of one of the partners of the stockbroker firm M/s. Mehta and Ajmera. The stockbrokers asserted that these transactions were genuine. The AO during assessment proceedings before him relied solely on the statement of 24/25.08.2000 made by Sri Rupani without taking any cognizance to cross-examination of Sri Rupani carried out by Mr. Mukundray K. Shah, one of the partners of the assessee firm on 25.10.2002 and treated the said loss arising out of share transactions as bogus while completing the assessment u/s

158BD/158BC[c]/143[3] on 31.12.2004. Aggrieved by this order of the Assessing Officer, the assessee preferred appeal before the first appellate authority. In appeal, the CIT[A] through his order dated 25.01.2007 sustained the action of the AO by giving emphasis on Sri Rupani's statement and relied on the contents of the remand report of the AO. Aggrieved by the order of the Ld. CIT[A], the assessee is now in appeal before us."

It appears that the share loss and the whole transactions were supported by contract notes, bills and were carried out through recognized stockbroker of the Calcutta Stock Exchange and all the payments made to the stockbroker and all the payments received from stockbroker through account payee instruments, which were also filed in accordance with the assessment.

It appears from the facts and materials placed before the Tribunal and after examining the same the Tribunal came to the conclusion and allowed the appeal filed by the assessee. In doing so, the Tribunal held that the transaction fully supported by the documentary evidences could not be brushed aside on suspicion and surmises. However, it was held that the transactions of share are genuine. Therefore, we do not find that there is any reason to hold that there is any substantial question of law involved in this matter. Hence, the appeal being ITA No.620 of 2008 is dismissed.

All parties concerned are to act on a signed xerox copy of the minutes of this order on the usual undertakings.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(PINAKI CHANDRA GHOSE, J.)

(SANKAR PRASAD MITRA, J.)

pkd.  
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