

O-100

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/160/2011
COMMISSIONER OF INCOME TAX, KOLKATA IV, KOLKATA
VS.
M/S. MACHINO TECHNO SALES LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 20th February, 2023

Appearance :
Mr. Tilak Mitra, Adv.
... for appellant

The Court : This appeal filed by the revenue under Section 260A of the Income Tax, 1961 (the Act) is directed against the order dated 13th April, 2011 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (Tribunal) in ITA No.92/Kol/2010 for the assessment year 2005-06.

The appeal was admitted on 16th August, 2011 on the following substantial question of law :-

"Whether the learned Tribunal below committed substantial error of law in holding that the income, derived by way of return from a Development Agreement in favour of the owner of the land, should be treated as capital gain instead of income from business ?"

We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant/revenue.

The short question involved in this appeal is whether in the absence of any evidence to show that the lands which were purchased by the assessee during 1985/1990 was intended for resale or in the absence of any evidence that the land was converted into stock-in-trade, whether the earnings of the assessee pursuant to a development agreement entered into with the developer would be business income. The learned Tribunal had taken into consideration the factual position which was not disputed by the revenue that the said land and factory shed was used by the assessee as its workshop and was shown as capital asset in its balance-sheet.

Further, the revenue did not dispute the fact that the purchase prices were debited by the assessee under the head 'land account'. On 13th November, 1994 the assessee entered into a development agreement with the developer under which the assessee in exchange of the land in question was entitled to get 45% of the constructed area and the remaining portion of the land and shed continued to be used by the assessee for its own workshop purchase. The Tribunal noted that no documents have been referred to by the revenue to show that the assessee had treated the asset as stock-in-trade.

On the other hand, the assessee continued to show the land as capital asset even after 1994, which fact was accepted by the department. The learned Tribunal had distinguished the decisions which were cited by the revenue by noting the facts of the case that the lands were purchased by the assessee during 1985/1990 and used as capital asset for its business purposes and

continued to treat the same as capital asset in the accounts. Thus, the Tribunal agreed with the assessee that there was no intention on the part of the assessee to enter into an adventure in the nature of trade to deal in the land as its business. Accordingly, the appeal filed by the department before the Tribunal was dismissed upholding the view taken by the CIT(A).

In the light of the cogent reasons assigned by the Tribunal on the undisputed factual position, we find no grounds to interfere with the order passed by the learned Tribunal.

Accordingly, the appeal is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)