THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 7th March, 2013

+ ITA 383/2012
+ ITA 385/2012

CIT DELHI-IV ..... Appellant

versus

HUGHES COMMUNICATION INDIA LTD. ..... Respondent

Advocates who appeared in this case:
For the Appellant : Mr Sanjeev Sabharwal, Sr. Standing Counsel.
For the Respondent : Mr Ajay Vohra with Ms Kavita Jha, Advocates.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

R.V. EASWAR, J

These are appeals filed by the revenue under section 260A of the Income Tax Act, 1961 and they are directed against the order dated 26.12.2011 passed by the Income Tax Appellate Tribunal ('Tribunal', for short) in respect of the assessment year 2004-05. The order of the Tribunal is a common order passed in cross-appeals.

2. The following questions stated to be substantial questions of law have been proposed by the revenue: -

> "2.1 Whether learned ITAT erred in deleting the addition of ₹90,35,298/- made by the Assessing officer on account of provisions for impairment of stock?
>
> 2.2. Wether learned ITAT/CIT (A) erred in deleting the addition of ₹5,00,00,000/- made by the Assessing officer on account of Sales of VSAT equipment?"

3. We may straightaway say that so far as the second question is concerned, the learned standing counsel for the revenue fairly stated that the addition was made on the basis of the sales tax assessment and that the Tribunal deleted the addition on the basis of the order passed by the Joint Commissioner of Sales Tax (U.P.) on 22.12.2006 in appeal by the assessee. The appellate authority by the aforesaid order had deleted the addition. The Tribunal, therefore, held that the addition made in the income tax assessment can no longer survive. It further noted that the assessing officer had no case that the service charges for installation and/ or de-installation of VSATs were not declared by the assessee in its books of accounts. In other words, it was the view of the Tribunal that the amount of ₹5 crores cannot also be added as service charges. Having regard to the stand taken by the standing counsel for the revenue and also having regard to the fact that the findings of the Tribunal are factual we do not think that the second question can be admitted.

4. So far as the first question is concerned, it relates to the valuation of the closing stock. The assessee carries on the business of installation of VSAT equipment. The stock consists of two categories; (i) old and used stock which is categorized as defective but repairable, (ii) demo stock. In its accounts the assessee reduced a sum of ₹90,35,298/- from the value of the stock on account of impairment and defects. The claim was made on the footing that the "net realizable value" of the stock had fallen below even the cost price. In support of the valuation, the assessee submitted the basis of the estimate which was prepared by its technical department. Certain details were also submitted regarding certain items of stock together with their realisable rate as on 31.03.2003 and 31.03.2004. The assessing officer rejected the assessee's claim for reduction in the value of the closing stock made on the basis of the net realizable value being less than the cost and made an addition of ₹90,35,298/- to the business profits.

5. On appeal the CIT (Appeals) noted that though the assessee was right that there was some diminution in the value of inventory, complete

details were not available. He, therefore, restricted the addition to 50% i.e. ₹45,17,649/-.

6. Both the revenue and the assessee filed cross-appeals before the Tribunal. The Tribunal recorded the following findings: -

(a) The claim of the assessee that the value of the stock had diminished below the cost is supported by the report submitted by the technical division of the assessee;

(b) The details of the valuation were placed before the assessing officer under cover of the letter dated 27.12.2006. These details show that the diminution in the value of the old/ unused stock of the demonstration stock, which came to ₹7,93,97,719/- was dealt with in the following manner: (a) ₹6,60,92,399/- was debited in the earlier years till the year ended 31.03.2003; (b) an amount of ₹42,70,022/- was claimed as consumables in the current year and; (c) the balance of ₹90,35,298/- was claimed as diminution in the valuation of the stock below the cost price for the year under appeal.

(c) The method of valuing the closing stock at "cost or net realisable value, whichever is lower" is a recognised and accepted principle of accounting;

(d) The above method was consistently followed by the assessee. In the other years in which the assessee adopted the same method, the assessing officer has accepted the same;

(e) No defect or irregularity in the details submitted by the assessee has been pointed out. The assessing officer has also not been able to show that the figure of net realisable value shown by the assessee was wrong.

In the light of the above findings the Tribunal dismissed the appeal of the revenue and allowed the appeal of the assessee.

7. The findings recorded by the Tribunal are not challenged. In fact the learned standing counsel fairly stated that the assessee can value the stock at the lower of the cost or the net realisable value as it is a recognised and accepted method. He, however, submitted that the claim of the assessee was not supported by any details. But this submission is

contrary to the finding of the Tribunal which has referred to the assessee's letter dated 27.12.2006 submitted before the assessing officer along with the necessary details in support of the valuation. These details have also been extracted by the Tribunal in para 11 of its order. We are, therefore, unable to accept the contention of the revenue that the claim of the assessee remains unsupported. It is also to be noted that on a question of valuation of the closing stock, any alleged difference or discrepancy tends to balance itself out over a period of years if the same method is consistently followed. This is because the closing stock of one year becomes the opening stock of the succeeding year and any addition made to the valuation of the closing stock to increase the profits for that year automatically gets neutralised when the same figure of closing stock is taken as the opening stock of the succeeding year. What is, therefore, more important to be seen is whether the same method of valuation of stock is followed consistently by the assessee so that there is no distortion of profit. There is also no finding to the effect that the true profits of the business cannot be determined having regard to the method of valuation of stock employed by the assessee. It may be noted that in ***India Motor Parts & Accessories Pvt. Ltd. vs. CIT*** **: (1966) 60 ITR 531** the Madras

High Court noted that the method of valuing the slow moving and obsolescent stock at a price below the cost was a recognised method in other countries and can be properly followed in India too.

8. In view of the foregoing discussion we do not think that any substantial question of law arises for our consideration. The appeals are accordingly dismissed.

R.V.EASWAR, J

BADAR DURREZ AHMED, J

March 07, 2013
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HIGH COURT OF DELHI
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