

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1266 OF 2013
WITH
INCOME TAX APPEAL NO.1267 OF 2013
WITH
INCOME TAX APPEAL NO.1290 OF 2013
AND
INCOME TAX APPEAL NO.1074 OF 2014

Commissioner of Income Tax-1,
Aayakar Bhavan, M.K. Road,
Mumbai-400 020. Appellant

- Versus -

M/s. Indian Rare Earths Ltd.,
Ecil Bldg., Plot No.1207,
Prabhadevi, Veer Savarkar
Marg, Mumbai-400 028.
PAN: AAACI2799F Respondent

Mr. Suresh Kumar for the Appellant.
Mr. Sanjiv M. Shah for the Respondent.

CORAM: S.C. DHARMADHIKARI &
A.K. MENON, JJ.

DATE: APRIL 13, 2015

ORAL ORDER (Per A.K. MENON, J.):

1. By this common order, we dispose of

Appeal Nos.1266/2013, 1267/2013, 1290/2013 and 1074/2014.

2. The aforesaid Appeals raise a common question of law, which reads as under:-

"Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in directing the Assessing Officer to adopt the value of the closing stock as declared by the assessee which is not in accordance with the principles laid down under the provision of Section 145A(a) of the Income Tax Act?"

3. The facts reveal that the assessee, a Government of India Company, had claimed loss on account of certain slow moving items and had written off and debited certain amounts in the relevant assessment year in the Profit and Loss Account under the Head "General Expenses Schdule 11A". The Assessing Officer in the course of scrutiny was of the view that the amount claimed towards loss of non-moving

stores could not be so claimed in view of the fact that the assessee was believed to have changed its method of accounting in respect of stores and spares, inasmuch as it wrote off 95% of the value of such stores and spares which had not moved over the last three years and retained only 5% of the residual value. The Assessing Officer was of the view that no specific reasons were mentioned for change of method of accounting. He relied upon the decision of this Court in the case of **CIT Vs. Heredilla Chemicals Ltd.**, reported in (1997) 225 ITR Page 532, in which case an item known as "PAN catalyst" was found to have become superfluous and obsolete and it was neither sold or disposed of by the assessee but merely written off in the account for the previous year. According to the Assessing Officer, merely by writing off the value, the assessee was not entitled to claim deduction in the year

in which it had written off the sum and that there must be something positive to show that the value had become nil only in that particular year so as to justify the claim for deduction. He was also of the view that the assessee would have to wait till the item concerned was sold before claiming any deduction of amounts between the purchase price and the sale price. Furthermore, the Assessing Officer was of the view that the assessee in the present case had changed its method of accounting in the Assessment Year 2001-02. It was a deviation from its consistent policy as regards the method of accounting followed for the preceding 40-50 years.

4. Being aggrieved, the assessee filed an Appeal before the Commissioner of Income Tax (Appeals), who was of the view that the write offs claimed for slow moving items were

justified in the facts of the case. The Revenue then came in appeal before the Income Tax Appellate Tribunal. The Tribunal, by a common order for the Assessment Years 2002-03, 2003-04 and 2004-05, held in favour of the assessee.

5. The Tribunal was of the view that the assessee had correctly claimed the write off. It relied upon the Tribunal's earlier view taken in the Assessment Year 2001-02 and decided the issue in favour of the assessee. While doing so, the Tribunal found that the assessee, a Government of India Company, was subject to audit by the Comptroller and Auditor General of India. The market value of the damaged goods was pegged at 5% and the valuation deducted by the assessee had been accepted by the Comptroller's office. Furthermore, the Department had not seriously disputed the value so determined. There was no

attempt on the part of the Revenue to establish otherwise and that being so the Comptroller and Auditor General having accepted the valuation of the closing stock, there was no reason to take a different view.

6. The Tribunal distinguished the case of **Heredilla Chemicals** (supra) on facts. In **Heredilla Chemicals** the assessee had purchased the PAN catalyst plant which was kept as a stand-by. Over the years, the production process having changed, the said PAN catalyst had become obsolete and on account of obsolescence, the assessee in that case had claimed 'obsolescence allowance' under Section 32(1)(iii) of the Income Tax Act. It was in that fact situation, that this Court had held that the assessee's method of valuing the closing stock could not be accepted. The fact situation here being different, the Tribunal,

in our view, correctly found that the decision in Heredilla Chemicals would not affect the case on hand and accordingly, it approved the value debited by the assessee for the purposes of writing off in the relevant assessment year.

7. We have heard learned counsel for the parties who have taken us through the orders of the Assessing Officer, the Commissioner and the Tribunal. Mr. Suresh Kumar, learned counsel for the Revenue, relied upon the Judgment in the case of Heredilla Chemicals, which is already differentiated on facts. Having considered the facts and the questions proposed as substantial questions of law, we find that Section 145A of the Income Tax Act, 1961 reads as under:

"145A. Notwithstanding anything to the contrary contained in [section 145](#),—

(a) the valuation of purchase and sale of goods and inventory for the

purposes of determining the income chargeable under the head "Profits and gains of business or profession" shall be—

(i) in accordance with the method of accounting regularly employed by the assessee; and

(ii) further adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods to the place of its location and condition as on the date of valuation.

Explanation.— For the purposes of this section*, any tax, duty, cess or fee (by whatever name called) under any law for the time being in force, shall include all such payment notwithstanding any right arising as a consequence to such payment;

(b) interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received.]”

8. In our view, the objection raised by the assessee on account of the method of accounting is not justifiable, inasmuch as

Section 145A deals with the valuation of purchase and sale of goods and inventory for the purposes of determining the income chargeable under the head "Profits and gains of business or profession" and it requires the assessee to follow the method regularly employed by the assessee. In the present case, it is not in dispute that the method of accounting had been altered with effect from the Assessment Year 2001-02. However, the facts reveal that the write off was on account of deterioration in the condition of the non-moving stores since the assessee's plants were located in remote places and near the sea. The non-moving stores and spares were corroded over a period of time due to wear and tear. This method of accounting having been adopted in the earlier years, there was no reason for the Assessing Officer to disallow the same on the ground that the accounting method had

changed.

9. Accordingly, we are of the view that the Judgment of this Court in the case of Heredilla Chemicals will not affect the write off by the assessee in the present case being distinguishable on facts. It is not merely on the basis of obsolescence of any particular equipment that the assessee has claimed write off of the slow/non-moving items. The write off claimed is essentially on the basis of deterioration of various materials, including raw-materials and in particular slow moving items of machinery. In the circumstances, we are of the view, that no substantial question of law arises in these Appeals and the same are accordingly dismissed. There will be no order as to costs.

(A.K. MENON, J.)

(S.C. DHARMADHIKARI, J.)