HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

PRESENT

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

I.T.T.A. NO.742 OF 2014

DATED:29.1.2015

Between:

M/s.Natco Pharma Limited

"Natco House", Road No.2,

Banjara Hills,

Hyderabad … Appellant

And

Assistant Commissioner of Income Tax

Central Circle-1, Hyderabad … Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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I.T.T.A. NO.742 OF 2014

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JUDGMENT: (per the Hon'ble Sri Justice Sanjay Kumar)

This appeal by the assessee against the order dt.28.8.2009 passed by the Income Tax Appellate Tribunal, Hyderabad Bench-A, Hyderabad, in relation to the block period 1.4.1988 to 6.5.1998, seeks to raise the following suggested questions of law.

1. *"On the facts and in the circumstances of the case, when all the purchases and sales were recorded in regular books of accounts and payments are routed through bank account, and there is no finding by any of the authorities that the appellant had conducted any purchases and sales outside the books, whether the Income Tax Appellate Tribunal is correct in law in holding that the same could be considered in an assessment made u/s.158-BC of the Income Tax Act?.*

2. *On the facts and in the circumstances of the case, when all the purchases and sales were recorded in regular books of accounts and payments are routed through bank account, and there is no finding by any of the authorities that the appellant had conducted any purchases and sales outside the books, whether the Income Tax Appellate Tribunal is correct in law in holding the difference in purchases and sales resulted which actually resulted in loss to be considered as undisclosed income of the appellant?*

3. *Whether the Income Tax Appellate Tribunal is correct in law in not considering the stock (Vinyl Sulphone) Rs.93,77,290/- as being part of closing stock, in spite of the fact that the appellant had proved the availability of the said stock beyond doubt?*

4. *Whether the Income Tax Appellate Tribunal is correct in law in holding that the payment of Rs.15 lacs made towards alleged bogus purchase and sales is not allowable as expenditure in view of Explanation to Section 37(1) of the Income Tax Act, 1961 though there is no such infraction of law and the expenditure is for business purpose?*

5. *Whether, on the facts and in the circumstances of the case, the order of Income Tax Appellate Tribunal is correct in law in holding that the disclosure of the appellant under the provisions of Section 132(4) of the Income Tax Act, 1961 could not have been retracted in spite of positive evidence to prove that the disclosure was made on mistaken impression, and only because it was retracted very late from the date of the disclosure?"*

Sri K. Vasanth Kumar, learned counsel appearing for the appellant-assessee, would however submit that only the first suggested question of law is being pressed and that he does not want to press the remaining questions.

It is his contention that the assessment for the block period ought to have been limited only to the material found during the search operations and the issue of bogus purchases and sales could not have been subjected to such block period assessment saddling the assessee with a higher rate of tax.

We find from the order passed by the learned Tribunal that during the course of search and seizure operations carried out on 6.5.1998, various incriminating documents were seized which related to bogus purchases and sales. There is no dispute as to the factum of these documents being found during the search operations. There is also no dispute that the learned counsel appearing for the assessee admitted that the subject transactions were in fact bogus purchases and sales and sought to justify them, as is evident from reading paragraph 6 of the Tribunal's order. Once the incriminating material based on which the transactions were categorized as bogus were relatable to the search and seizure operations, the assessee cannot contend that the provisions of Section 158-BC of the Income Tax Act, 1961 would have no application to the assessment in relation to the aforesaid bogus transactions. We therefore find no irregularity in the order passed by the Tribunal as regards this aspect.

No substantial question of law arises for consideration in this appeal and the same is accordingly dismissed. There will be no order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

29.1.2015

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