IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 434 OF 2010

Director of Income Tax
(International Taxation), Mumbai .. Appellant

v/s.

Agroma N.V. .. Respondent

Mr. Suresh Kumar for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.
DATED : 19th JANUARY, 2016.

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) challenges the common order dated 9th November, 2006 passed by the Income Tax Appellate Tribunal (the Tribunal) in respect of the Assessment Years 1998-99, 1999-2000 and 2000-01. This appeal relates to Assessment Year 2000-01.

2. The Revenue has formulated the following questions of law for our consideration :-

> *"(a) Whether on the facts and in the circumstances of the case, the Tribunal was justified in setting aside the matter to*

the file of the Assessing Officer after agreeing with the findings that the main purpose of transfer of the dredger was to claim depreciation with reference to the enhanced cost?

(b) Whether on the facts and in the circumstances of the case and in law and considering the provisions of explanation '3' to Section 43(1) of the Act, the Tribunal was justified in setting aside the matter to the file of the Assessing Officer for determination of the market value of the dredger ?"

3. The respondent assessee is a wholly owned subsidiary of one Tshd Agronaut N.V. (holding Company). During the Assessment Year i.e. 1998-99, the respondent assessee's holding company sold a dredger to it for a consideration of Netherlands Antillean Guilder (NLG) 3.19 crores as against the holding Company's cost of purchase of the dredger at NLG 1.98 crores. The Assessing Officer in the assessment order for the Assessment Year 1998-99 concluded that the transaction between the holding company and the respondent assessee did not reflect the correct value, as a dredger which was purchased by the holding company in 1990, could not be sold in 1998 at a price higher than its initial cost of purchase. In view of the above, the Assessing Officer invoked Explanation 3 to Section 43(1) of the Act and arrived at the written down value of the dredger in the hands of the holding company on the date of its sale to the respondent assessee and took that value as

the cost of purchase of the dredger by the respondent assessee from its holding company. For the subject Assessment Year, the claim for depreciation by the respondent assessee was reduced in view of the cost of purchase of the dredger becoming lower.

4. In appeal, the Commissioner of Income Tax (Appeal) did not disturb the finding of the Assessing Officer. On further appeal, the Tribunal by the impugned order held that Explanation 3 to Section 43 (1) of the Act by the Assessing Officer was justified on the ground that the main purpose of the transfer of the dredger to the respondent assessee was to claim depreciation by it with reference to enhanced cost and thus reducing the liability to tax in its hands (respondent assessee). However, the impugned order records the fact that during the course of the assessment proceedings, the respondent assessee had brought on record valuation reports in respect of the dredger reflecting its value on the date of purchase by the respondent assessee from its holding company. The impugned order of the Tribunal placed reliance upon the decision of this Court in ***B.R. Bansilal Abirchand Spinning & Weaving Mills Vs. The Commissioner of Income Tax (1970) 75 ITR 260*** and the decision of the Gujarat High Court in ***Ashwin Vanaspati Industries Vs. Commissioner of Income Tax 255 ITR 26***, to conclude that while

determining the actual cost of the assets, what has to be taken into account is the price payable in prevailing market conditions and the written down value method is not relevant in determining the cost of the asset to the purchaser.

5. In the above view, the impugned order of the Tribunal set aside the order of the Commissioner of Income Tax (Appeals) and restored the issue to the file of the Assessing Officer to re-determine the cost of the dredger to the respondent assessee, on application of Explanation 3 to Section 43(1) of the Act. It directed the Assessing Officer to take into account the valuation reports relied upon by the respondent assessee and consider the same having regard to a comparative study of the prices of similar dredgers in the open market. The impugned order gave liberty to the Assessing Officer to have the dredger valued by the Departmental Valuation Cell and determine the "actual cost" of the asset in accordance with law and after following the principles of natural justice.

6. It would thus be noticed that the impugned order has merely restored the issue to the Assessing Officer for re-consideration of the issue after *inter alia* taking into account the valuation reports submitted

by the respondent assessee during the course of the assessment proceedings and any other evidence, which the Revenue may bring on record in respect of the cost of the dredger. Therefore, the impugned order merely restores the issue to the Assessing Officer for a fresh consideration after negativing the claim of the Revenue that the written down value of the dredger in the hands of the holding company on the date of its sale is conclusive of the cost of purchase in the hands of the respondent assessee. As this on the basis of the impugned order was the decision of the jurisdictional High Court in *B.R. Bansilal Abirchand Spinning & Weaving Mills (Supra)*, no substantial question of law arises in the questions as formulated.

7. Accordingly, the Appeal is dismissed. No order as to costs.

(B.P. COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**