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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.1 OF 1998

M/s. Famous Sand Dredging Co. ..Applicant

Versus

The Commissioner of Income Tax
Bombay City XII, Bombay ..Respondent

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Ms. Neha Mehta i/b. Apte & Co. for the Applicant.
Mr. Suresh Kumar for the Respondent.

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CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.
DATE : 25TH APRIL, 2016

ORAL ORDER (PER A.K. MENON)

1. This Reference is made under Section 256(1) of the Income Tax Act, 1961 (the Act) by the Income Tax Appellate Tribunal (Tribunal) seeks our opinion relating to assessment year 1989-90 on the following substantial question of law:-

> *"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in upholding a part of disallowance, viz. Rs.2,00,000/- made out of the expenditure incurred on repairs by the assessee?"*

2. The facts set out in the statement of case are : The assessee is a partnership firm engaged in the business of dredging sand and for that business it uses two dredgers. For assessment year 1989-90 the assessee claimed having incurred expenditure of Rs.10,33,547/- towards cost of repairs of two dredgers which mainly pertain to replacement of steel plates in the buckets which are used for dredging. The major portion of the above expenditure was attributed to the cost of steel plates of the buckets that are actually utilized for dredging. The assessee claimed having purchased the steel scrap plates from one M/s. J.K. Industries, a partnership firm in which one of the partners of the assessee's firm had become a partner, but after the relevant period.

3. The Assessing Officer by his order dated 27th March, 1992 passed under Section 143(3) of the Act, on the basis of evidence, concluded that the repair expenditure was excessive and disallowed a sum of Rs.5,00,000/-. This is particularly so since no scrap arising on account of repairs was seen to be sold or accounted for and the fact that a new dredger would be constructed at a cost of Rs.7 lakhs. He made some further additions with which we are not presently concerned.

4. Being aggrieved, the assessee carried the matter in appeal before the Commissioner of Income Tax (Appeals) (CIT(A)). By order dated 7 July, 1993 the CIT(A) held that repairs have not been substantiated and sustained the additions made by the Assessing Officer.

5. On further appeal, the Tribunal upheld the addition of Rs.2,00,000/-out of the total addition of Rs.5,00,000/- made by the Assessing Officer. The Tribunal also observed that the repair expenses for the year were abnormally high compared to similar expenses in the preceding year and in the subsequent year. The Tribunal found that there was no separate debit of labour charges to the profit and loss account. It therefore concluded that the claim for the repair charges at Rs.10,33,547/- was exaggerated. However it allowed a deduction to the extent of Rs.2,00,000/- on account of repairs. Thus the disallowance of Rs.5,00,000/- was upheld. Therefore it is clear that out of Rs.10,33,547/- claimed as expenditure for repairs, on account of Rs.8,33,547/- was allowed as deduction.

6. Ms. Mehta, the learned counsel appearing for the applicant in support of the Reference submitted that the Assessing Officer, CIT(A) and the Tribunal had misdirected themselves in concluding that the assessee had not incurred the

expenditure expenses of Rs.10,33,747/- towards repairs. She submitted that the main reason for the aforesaid Revenue authorities to come to this conclusion was by virtue of the fact that they suspected cost of repairs to be inflated only on the basis of assumptions and presumptions such as a partner of the assessee having joined the supplier of the steel plates as a partner. Ms. Mehta submitted that the partner concerend had so joined albeit at a later point in time and the presumption that the price of the steel plates that the assessee claimed to have purchased would have been inflated was not justifiable. Ms. Mehta further submitted that even if one proceeds to accept the assumption of the authorities under the Act that the massive purchase of scrap steel was from its sister concern M/s. J. K. Industries yet that fact by itself would not establish that the prices were inflated in the absence of contemporaneous evidence. Ms. Mehta then contended that there is no dispute that steel scrap had been purchased and that repairs were in fact carried out and in the face of these admitted facts, there was no justification for making the disallowance and declining to grant the claim for repair expenses.

7. Ms. Mehta also relied upon a judgment of Gujarat High Court in the case of ***CIT vs. City Ahmedabad Spinning and Weaving Mfg. Co. 207 ITR 427***

and submitted that the Tribunal had, inter alia, disallowed the expenses because the assessee's turnover were more or less stable during the year in question as well as the previous year. She submitted that in the aforesaid judicial pronouncement the Gujarat High Court had held that the expenditure cannot be disallowed merely because the assessee's income would be merely reduced by the disallowance. In that case the Income Tax Officer had rejected the claim of the assessee on the ground that the expenditure claimed was disproportionate to the income.

8. Mr. Suresh Kumar appearing for the revenue submitted that there was no substance in the assessee's case and that the question referred is not the question of law and more in the realm of fact. All the authorities had found in favour of the revenue and there is no justification in contending that the tribunal ought to have allowed the entire claim for repairs at Rs,10,33,547/-. It is submitted that from the facts as recorded in the order of the Assessing Officer, Commissioner of Income-Tax (Appeals) and the Tribunal it is evident that the assessee submitted no evidence whatsoever of the alleged expenses incurred for repairs. Mr. Suresh Kumar therefore submitted that the substantial question of law needs to be answered in the affirmative i.e. in favour of the revenue.

9. We have heard both learned counsel at length. On behalf of the assessee, Ms.Mehta had contended that the Tribunal had failed to appreciate the fact that there was no dispute as to factum of purchase of steel plates by the assessee. She then submitted that the revenue had proceeded to deny expenses on the ground that the expenses were inflated only because after suspicion that the assessee firm had purchased the steel plates from sister concern and that seller of steel plates M/s. J.K. Industries was not sister concern of the assessee and that the tribunal proceeded on misconceived notion that M/s. J.K. Industries was sister concern of the assessee only because one of the partners of the assessee firm had joined M/s. J.K. Industries as a partner and that too at different point in time and not during relevant period when the assessee purchased steel plates from M/s.J.K. Industries.

10. We are unable to agree with Ms. Mehta that the tribunal proceeded on assumptions and presumptions that the expenses were inflated because turnover of the assessee had remained more or less the same when compared to relevant year and the immediately preceding year. Having considered the submissions on behalf of the Respondent, we are not convinced that the tribunal had erred in upholding disallowance. Disallowance has been partial upto sum of Rs.2 lakhs. The Tribunal

has exercised its discretion in reducing disallowance from Rs.5 lakhs by the Assessing Officer vide his assessment order dated 27th March, 1992 to Rs.2 lakhs. The Tribunal being ultimate fact finding authority, we are not inclined to disturb those findings of fact unless the same are shown to be perverse. The contention of Ms. Mehta that the revenue had not established that the cost of steel plates and cost of repairs was inflated is not a submission which commends itself to us inasmuch as it was for the assessee to prove that dredging buckets were in fact repaired and that such repairs required purchase of steel plates and that steel plates were utilised for repair work of buckets and in respect of which the work was actually carried out. However, what we find is that apart from a bald assertion that repairs were required to dredging buckets a sum of Rs.10 lakhs was incurred for purchase of steel, there is nothing to establish the extent of specific work actually carried out. We find there were several hurdles in path of the assessee in establishing repair expenses which the assessee could not clear and inspite of being put to it. We deal with these briefly below :

(A) Assuming in favour of the assessee that the assessee did buy steel plates for repairing buckets and that buckets were in fact repaired, the minimum that the assesee should have been able to show is that the steel purchased was meant for repairing the buckets and that this work was carried on by the persons in house and who were conversant with the same. Before the revenue, the assessee contended that labour charges were incurred for carrying out repairs but when asked what labour charges were incurred for the work, the assessee submitted that the labour charges for carrying out the repairs were debited to the dredger labour account. However there is nothing to show that the labour employed for dredging work was capable of and did in fact carry out repairs of technical nature of replacing the steel plates in house. There is no evidence to suggest that the work was in fact carried out by the employees of the assessee. This was for the appellant-assessee to establish and no records of any nature are seen to be produced in support of this contention.

(B) The revenue had queried the assessee as to proceeds of scrap steel generated by the repair work. To this, the assessee contended that the scrap steel was lost mid-sea. This clearly is contention that is once again difficult to accept. There is no evidence to suggest that any such repair work of buckets was carried out mid-sea. Firstly, if dredging buckets had to be repaired, there was no reason for the dredger sailing mid-sea. After steel plates were purchased from M/s. J.K. Industries at Bhavnagar, as evident from the record, there is nothing to show as to why the repairs were not carried out at the ferry/wharf/port at which dredger was docked/moored. The contention that repair work was carried out mid-sea was therefore found unacceptable by the authorities.

11. For the aforesaid reasons, we find that the contention of the assessee are far fetched and devoid of merits. In absence of any specific evidence, the revenue authorities have exercised their discretion and in the course of fact finding exercise have disallowed a sum of Rs.2,00,000/- out of Rs.10,33,547/- claimed. We do not find anything perverse or illegal in the method or reasoning given by the Commissioner of Income-Tax (A) or the Tribunal at arriving at its conclusion.

12. In the circumstances findings of fact arrived at by all the three authorities under the Act that the expenses claimed for repairs were inflated cannot be said to be perverse so as to warrant interference. As far as the judgment cited by Ms. Mehta on behalf of the assessee is concerned, the Tribunal's conclusion that the deduction claimed was unreasonable because the assessee's income would be reduced and that there was no evidence of reduction pursuant to the expenditure stated to be incurred is not of much assistance to the assessee inasmuch as that is not the ground on which the tribunal has upheld disallowance. The partial acceptance of disallowance cannot be lost sight of during its fact finding mission. The revenue

authorities have appropriately disallowed an amount of Rs.2,00,000/- out of Rs.10,33,547/- on account of inflated cost of repairs. This is a possible view on the facts before it.

13. In the circumstances we pass the following order :

(I) The question referred to this Court for its opinion is answered in the affirmative inasmuch as the tribunal was right in disallowing repair expenditure to the extent of Rs.2,00,000/- out of Rs.10,33,547/- claimed as repairs expenditure. The question is therefore answered in favour of the revenue and against the assessee.

(II) The Reference is disposed of in above terms. No order as to costs.

(A.K. MENON,J.) **(M. S. SANKLECHA,J.)**

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