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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 114/2016

LEAR AUTOMOTIVE PVT LTD.

..... Appellant

Through: Mr Rajat Navet, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent

Through: Ms. Vibhooti Malhotra, Junior

Standing Counsel for Mr Ashok Manchanda,
Senior Standing Counsel.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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18.05.2016

1. This appeal by the Assessee, Lear Automotive Private Limited, under Section 260A of the Income Tax, 1961 ('Act') is directed against the impugned order dated 9th September 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5256/Del/2012 for the Assessment Year ('AY') 2005-06.

2. By the impugned order, the ITAT upheld the order passed by the Commissioner of Income Tax (Appeals) ['CIT (A)'] and has confirmed the addition of Rs. 14,08,99,500 made by the Assessing Officer ('AO') holding that the trade discount given by the Appellant to Mahindra & Mahindra Limited ('MML') for obtaining exclusive vendor status was in the nature of

a capital expenditure and not a revenue expenditure.

3. Admit.

4. The following question of law is framed for consideration:

“Whether the ITAT was correct in law in holding that the reassessment proceedings initiated by the AO under Section 147/148 of the Act were valid in law?

5. This Court has heard the submissions of Mr. Rajat Navet, learned counsel for the Appellant and Ms. Vibhooti Malhotra, learned counsel for the Revenue.

6. The facts leading to the present petition are that the Appellant is engaged in the business of manufacturing/assembling for automotive industry customers. The Appellant is also engaged in designing and development of automotive seating systems and interior parts for the automotive industry. The major customers of the Appellant in India includes Mahindra & Mahindra (‘M&M’). It is stated that M&M was in the process of developing and planning for the manufacture and marketing of a new utility vehicle, namely, ‘Scorpio’ in 1998. An agreement dated 11th January 1998 was entered into between the Appellant herein and M&M in terms of which the Appellant was to design, develop and provide seating systems, interior trims etc. for the Scorpio vehicle and M&M would purchase 100% of the required products. M&M agreed to appoint the Appellant as the exclusive supplier of the products for which the Appellant would pay a sum of US\$ 6 million in a phased manner as provided in the agreement.

7. Subsequently, a Supplementary agreement was entered into between the parties in 2000 modifying some of the terms and conditions of the agreement dated 11th January 1998. Thereafter, at a joint meeting held on 7th March 2003, the terms and conditions of the Agreement dated 11th January 1998 and the Supplementary Agreement were further modified. It was agreed that the amount of US\$ 6 million would be adjusted by way of a discount/price reduction in the products/seats to be supplied by the Appellant to M&M.

8. For the AY 2005-06 the Appellant had filed its return of income on 28th October 2005 declaring an income of Rs. 23,03,25,050. Its return was picked up for scrutiny and notice was issued under Section 143 (2) of the Act on 19th October 2006.

9. During the course of the assessment proceedings, the AO raised various queries pertaining to the assessment by way of a notice dated 14th November 2007. Query No. 36 reads as follows:

“Please refer to Para -12 of Notes on accounts relating to an Agreement. Please file complete details and manner in which the Assessing Officer gained in this agreement.”

10. The Appellant pointed out that in para 12 of Schedule 21 of the Notes to Accounts of the said AY, it had been mentioned, as under:

“In March 2003, under an agreement, a total consideration of USD 6,000 was agreed with a customer, to obtain exclusive vendor status. This consideration is being set off against sales based on pre-agreed rates/quantities and are appropriately recorded as volume discount USD 4,124 (equivalent of Rs.

187,866) has been adjusted towards above till end of this financial year. The total consideration will be paid off by the end of next financial year.”

11. The Appellant by a reply dated 28th July 2008 explained *inter alia* that no amount was actually paid in cash at any given point of time by the Appellant to M&M and that the discounts on the total number of seat covers provided by the Appellant to M&M was an allowable expense under Section 37 (1) of the Act.

12. It is stated that after being satisfied by the response given by the Appellant, the AO passed the assessment order dated 24th December 2008 assessing the Appellant’s income at Rs. 24,85,09,200.

13. Thereafter on 19th January 2010 the AO issued a notice under Section 148 of the Act seeking to reopen the assessment for AY 2005-06 stating that he has reason to believe that Appellant’s income chargeable to tax for the AY 2005-06 had escaped assessment.

14. Pursuant to the above notice, the Appellant by its letter dated 15th February 2010 stated that the original return of income filed under Section 139 (1) for the said AY should be treated as the return filed in response to the said notice. On 1st April 2010 the AO furnished the reasons recorded under Section 147 of the Act for reopening of the assessment. The reason recorded for reopening of the assessment in respect of the amount of Rs.18,78,66,000 as mentioned in Serial No. 12 of the Notes to Accounts is as under:

“B. That as per the notes to accounts assessee had paid an amount of Rs. 18,78,66,000 to obtain exclusive vendor status and this amount was set-off against sales of current financial year. As the expenses incurred on exclusive commercial rights and covered under intangible assets, therefore, it needed to be capitalized. Only depreciation @ 25% was allowable on such capitalized amounts. Thus, depreciation of Rs. 4,69,66,500 was only allowable in the current financial year out of total claim of the Assessee amounting to Rs. 18,78,66,000. The mistake resulted is under assessment of income of Rs. 14,08,99,500 involving tax effect of Rs. 7,47,60,042.”

15. The Appellant filed objections on 20th September 2003 which were rejected AO by an order dated 4th November 2010.

16. Thereafter, the AO concluded the reassessment proceedings and passed an order dated 14th December 2010 making a disallowance of Rs. 14,08,99,500 after rejecting the Appellant's plea that the volume discount from the sale price was a pure business expense and therefore a revenue expenditure under Section 37 (1) read with Section 28 of the Act. The AO held that such expense was for obtaining exclusive vendor status and therefore, a capital expenditure. The amount of Rs. 18,78,66,000 was capitalized under the block of intangible assets and 25% depreciation was provided thereon. This resulted in a total disallowance of Rs. 14,08,99,500.

17. Aggrieved by the above assessment order, the Appellant filed an appeal before the CIT (A) which came to be dismissed on 2nd August 2012. An application filed by the Appellant under Rule 46A of the Income Tax Rules, 1962 ('Rules') seeking permission to file additional evidence (in the form of the Auditor's certificate) was also dismissed.

18. Thereafter, the Appellant filed ITA No. 5256/Del/2012 before the ITAT which was dismissed by the impugned order dated 9th September 2015. On the question of reopening of the assessment, the ITAT recorded that there was no evidence on record to indicate that the agreement entered into by the Assessee with M&M dated 11th January 1990 was filed before the AO. Therefore, the AO had no opportunity to peruse and draw any kind of inference about the nature of the agreement or the right acquired pursuant thereto. It was, accordingly, held that AO at the time of framing the original assessment had not formed any opinion on the said issue. Consequently, the plea of the Assessee that the initiation of the reassessment was prompted by change of opinion was rejected.

19. The Court has perused the documents on record and considered the submissions of learned counsel for the parties. The ITAT appears to have overlooked the fact that specific queries were raised by the AO during the course of the original assessment proceedings as regards the agreement entered into between the Assessee and M&M which is referred to in para 12 of the Notes to the Accounts. Query No. 36, as already extracted hereinbefore, was specific to the issue. The reply dated 28th July 2008 by the Assessee to the above questionnaire was a fairly detailed one. *Inter alia* it was pointed out that this was merely a commercial arrangement entered into between the management of both the companies, providing for a committed overriding volume discount by the Appellant. While the AO could have insisted on seeing the agreement, he appears to have been satisfied with the above detailed reply of the Assessee explaining the nature of the agreement.

20. Merely because the AO did not ask for the copy of the agreement to be produced cannot lead to the inference that he had no occasion to form an opinion thereon. Such a conclusion drawn by the ITAT is belied by the above specific query raised by the AO on the agreement and the detailed explanation offered by the Assessee in response thereto. Also, as explained by this Court in ***Commissioner of Income Tax v. Eicher Limited (2012) 343 ITR 37 (Del)***, if after considering it some detail the AO chooses not to give a specific finding with regard to a particular issue, that cannot give the AO or his successor reason to reopen the assessment.

21. The Court is satisfied that there was occasion for the AO in the original assessment proceedings, to form an opinion on the question of the nature of the agreement between the Assessee and the MM. The AO did form an opinion thereon and after raising a specific query and examining the reply thereto of the Assessee. The original assessment was completed after accepting the explanation offered by the Assessee.

22. The reasons to believe did not refer to any fresh tangible material that came to the notice of the AO after the passing of the original assessment order. It may be recalled that the assessment proceeding under Section 143 (3) of the Act was completed after scrutinizing the documents produced by the Assessee and after specific queries were put to the Assessee which were replied to by the Assessee to the satisfaction of the AO. In light of the law explained by the Supreme Court in ***Commissioner of Income Tax v. Kelvinator of India Limited (2010) 187 Taxman 312 (SC)***, the reopening of

the assessment in the present case can be only be termed as being based on a mere change of opinion by the AO after examining the very material that was available at the time of the original assessment.

23. For the aforementioned reasons, the question raised is answered in the negative, i.e., in favour of the Assessee and against the Revenue.

24. The impugned order of the ITAT and the corresponding orders of the CIT (A) as well as of the AO are accordingly set aside.

25. The appeal is allowed in the above terms but, in the facts of the case, with no orders as to costs.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MAY 18, 2016

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