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

INCOME TAX APPEAL NO. 25 OF 2015

The Commissioner of Income Tax-3 .. Appellant
v/s.
SICOM Ltd. .. Respondent

Mr. Ashok Kotangle a/w Ms. Padma Divakar for the appellant
Mr. Nishant Thakkar a/w Ms. Jasmin Amalsadvala i/b PDS Legal for the respondent

CORAM : S.V. GANGAPURWALA &
G.S. KULKARNI, J.J.
DATED : 8th JUNE, 2017

P.C.

1. The appeal relates to Assessment Year 2007-08.

2. The department has assailed the order of the Tribunal on the following questions of law as framed in the appeal memo : -

(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in restricting the disallowance of expenses incurred in relation to earning of exempt income at 1% of the administrative expenses, by relying on the decision of Hon'ble Bombay High Court in the case of Godrej & Boyce Mfg. Co. Ltd. without appreciating that expression used in the judgment was reasonable basis and not ad-hoc estimation basis.

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the decision of the Ld. CIT(A) to delete the dis-allowance of bad debts in respect of write off of investment / stock of the assessee, without appreciating that the investment written off by the assessee were neither sold nor actually written off but the same were lying in the balance sheet of the assessee and therefore the amount written off by the assessee was merely a provision which was not allowable as per the provisions of Section 36(1)(vii) of the Act.

(c) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the decision of the Ld. CIT(A) to delete the dis-allowance of bad debts in respect of write off of investment / stock of the assessee by observing that the assessee was engaged in the business of sale and purchase of shares and therefore the amount written off was a business loss, without appreciating that the section 36(1)(vii) after 01.04.1989 draws a distinction between write off and provision for doubtful debt and if a provision for doubtful debt is expressly excluded from Section 36(1)(vii) then such a provision cannot be claimed as trading loss under Section 37 of the I.T. Act.

(d) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in setting aside the issue of depreciation claim in respect of assets involved in sale

> *and lease back transactions entered during the year, to the file of the Assessing Officer by relying on the decision of the Hon'ble Delhi High Court in the case of Cosmo Films Ltd. without appreciating that the facts and findings of the cases are clearly distinguishable to each other, as in the case of Cosmo Films Ltd. a sum was retained by the lessor for the security of the leased equipments whereas in this case the assets were retained in the name of lessor for securing the financed amount."*

3. The learned Counsel for the appellant fairly concedes that so far as question nos. (a) and (d) are concerned, the same are covered by the order of this Court in Income Tax Appeal No.263 of 2014 dated 6th September, 2016 wherein this Court had negatived the contention of the Department.

4. The learned Counsel for the appellant submits that the Tribunal was not justified in upholding the judgment of the CIT(A) to delete the dis-allowance of bad-debts in respect of write off of investment / stock of the assessee as same were neither sold nor actually written off but the same were lying in the balance-sheet of the assessee and, therefore, the amount written off by the assessee was merely a provision which was not allowable as per provisions of

Section 36(1)(vii) of the Income Tax Act. The Tribunal and the CIT(A) were not right in reversing the order of the Assessing Officer.

5. The learned Counsel for the respondent submits that the debt was irrecoverable as such tantamount to bad debts. The learned Counsel for the respondent further submits that the accounting principle followed by the assessee is the standard accounting principle. The valuation is made at cost or market value, whichever was low. The market value was NIL. In view of that no error has been committed by the Tribunal in passing the impugned order. The learned Counsel for the respondent relied upon the judgment in the case of ***United Commercial Bank Vs. Commissioner of Income Tax, (1999) 106 Taxman 601***.

6. We have considered the submissions canvassed by the learned Counsel for the respective parties. As has been fairly conceded by the learned Counsel for the appellant that ground nos. (a) and (d) do not involve substantial question of law and are already concluded by the judgment of the Division Bench of this Court in Income Tax Appeal No.263 of 2015.

7. So far as ground nos. (b) and (c) are concerned, we do not find that the same would give rise to any substantial question of law. The CIT(A) and the Tribunal had concurrently appreciated the accounting system. The CIT(A) has observed that the Assessing Officer has accepted that the assessee is following lower of cost or market value of closing stock. It is evident that the whole of the investment has turned bad and it does not and cannot have any market or intangible value. As such, the assessee has taken its market value as NIL in the books of account.

8. The Apex Court in the case of *United Commercial Bank* (supra) has observed that in income tax return, the valuation made at cost or market value, which ever was lower, is a valid method to be followed and the same is accepted by the Income Tax Department.

9. In the light of the above, no substantial question of law arises. The appeal is dismissed, however, with no order as to costs.

(G.S. KULKARNI, J.) **(S.V. GANGAPURWALA, J.)**