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

INCOME TAX APPEAL NO. 1546 OF 2014

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

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

CORAM : M.S. SANKLECHA &
PRAKASH D. NAIK, J.J.
DATED : 17th FEBRUARY, 2017.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 31st January, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is a common order passed for Assessment Years 1997-98 and 1998-99. This appeal relates to Assessment Year 1998-99.

2. The Counsel inform us that the Revenue's appeal for Assessment Year 1997-98 has been rejected under Rule 986 of the Bombay High Court (O.S.) Rules by the Prothonotary and Senior Master.

3. Mr. Kotangle, learned Counsel for the Revenue urges the

following questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied u/s 271(1)(c) of the I.T. Act with respect to the issue of deduction u/s 36(1)(viii) on dividend and interest income earned from debentures, by holding that the issue involved is a debatable one?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in setting aside the issue of penalty in respect of assets leased to Konkan Railways Corp. Ltd. and Andhra Pradesh Electricity Board, without appreciating the fact that the lease transactions were found to be non genuine and paper transactions only and the underlying assets were held as a security against the finance provided to the lessees ?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied u/s 271(1)(c) of the I.T. Act with respect to depreciation claim of sale and lease back transactions involving leasing of assets of Maharashtra Esters & Ketones Pvt. Ltd., without appreciating that the lease transactions were found to be non genuine and paper transactions only and the underlying assets were held as a security against the finance provided to the lessees ?

4. <u>Regarding Question (i) :-</u>

(a) The respondent assessee in the subject assessment year had claimed deduction on account of special Reserve under Section 36(1)(viii) of the Act including in its profits, dividend and interest income for providing long term finance for industrial / agricultural development / infrastructure facility in India. The Assessing Officer held that the interest and dividend income could not be treated as income derived from the business of providing long term finance for industrial / agricultural development / infrastructure facility in India. Therefore, the deduction claimed to the extent of interest and dividend income under Section 36(1)(viii) of the Act was disallowed in the assessment order dated 10th February, 2000 under Section 143(3) of the Act.

(b) Being aggrieved, the respondent assessee carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. However, without any success on this issue, as the CIT(A) upheld the view of the Assessing Officer that interest and dividend income is not part of profits earned on account of long term finance for the purpose of deduction u/s 36(viii) of the Act. Thus, the appeal was dismissed by order dated 9th February, 2004 of the CIT(A).

(c) The respondent assessee accepted the order of the CIT(A) as it was not challenged before the Tribunal.

(d) However, the Assessing Officer while rejecting the assessee's claim for deduction under Section 36(viii) of the Act, by his assessment order dated 10th February, 2000 had initiated penalty proceedings under Section 271(1)(c) of the Act.

(e) Thus, on 18th March, 2005, the Assessing Officer passed an order imposing penalty on the above issue under Section 271(1)(c) of the Act. This penalty was on account of filing inaccurate particulars of income in claiming deduction under Section 36(viii) of the Act.

(f) Being aggrieved, the respondent assessee carried the issue in appeal to the CIT(A). By order dated 2nd January, 2006 the CIT(A) dismissed the appeal, upholding the imposition of penalty under Section 271(1)(c) of the Act.

(g) On further appeal, the Tribunal by the impugned order deleted the penalty imposed under Section 271(1)(c) of the Act by the Assessing Officer and confirmed by the CIT(A). This on account of the fact that the issue of dividend and interest income forming part of profits of business of long term finance is a debatable issue. For the aforesaid conclusion, the impugned order relied upon the decision of the Karnataka High Court in ***Commissioner of Income Tax Vs. Canfin Homes Ltd. 347 ITR 382*** wherein on merits, the assessee's claim therein for deduction under Section 36(1)(viii) of the Act on account of dividend income and interest was allowed as being a part of profits earned in the business of providing long term finance for industrial /

agricultural development / infrastructure facility in India. Moreover, the Tribunal also records a finding of fact that the respondent assessee had in its return of income claimed interest and dividend income as being available for deduction under Section 36(1)(viii) of the Act in its Return of Income and mere rejection of a claim for deduction will not amount to filing inaccurate particulars of income.

(h) In the above circumstances, the impugned order holds that no penalty is imposable, notwithstanding the fact that in quantum proceedings, the respondent assessee had accepted the order of the CIT(A), adverse to it on the above issues.

(i) Mr. Kotangle, learned Counsel for the Revenue does not dispute the fact that the decision of Karnataka High Court in Canfin Homes Ltd. (supra) would apply on merits to the present facts making the issue a debatable issue. It is not the case of the Revenue before us that penalty is imposable even in respect of debatable issue.

(j) Therefore, the view of the Tribunal that no penalty is imposable on the above count, cannot be found fault with. Accordingly, question (i) as proposed does not give rise to any substantial question of law. Thus, not entertained.

5. <u>Regarding Question no.(ii) :-</u>

(a) The respondent assessee had in quantum proceedings claimed depreciation respect of the assets which it had leased. The Assessing Officer in assessment order dated 10th February, 2000 passed under Section 143(3) of the Act did not accept the transaction to be a lease but held it to be a finance transaction. Consequently, the claim for depreciation on the leased assets was dis-allowed by order dated 10th February, 2000 while initiating penalty proceedings under Section 271(1)(c) of the Act.

(b) In appeal, the CIT(A) by order dated 9th February, 2004 confirmed the order of the Assessing Officer dated 10th February, 2000 on the above issue. On further appeal, the Tribunal in quantum proceedings, by its order dated 22nd May, 2013 set aside the orders dated 10th February, 2000 and 9th February, 2004 of the lower authorities in so far depreciation was claimed on lease of assets to Konkan Railway Corporation Ltd. and Andhra Pradesh State Electricity Board and restored the issue to the Assessing Officer to examine the sale and lease back agreements afresh to determine its nature.

(c) In the meantime, by an order dated 18th March, 2005 the Assessing Officer confirmed the penalty under Section 271(1)(c) of the Act, upon the respondent assessee on the above account.

(d) On appeal, the CIT(A) also confirmed the penalty under Section

271(1)(c) of the Act on the above account as imposed by order dated 18th March, 2005 of the Assessing Officer.

(e) On further appeal, the Tribunal by the impugned order after recording the fact that in the quantum proceedings by its order dated 22nd May, 2013 it had restored the issue of lease and buy back agreements to the Assessing Officer to reconsider the issue, also restored the penalty proceedings to the Assessing Officer to take a view on penalty imposable after the Assessing Officer decides the matter in quantum proceedings.

(f) It is also an undisputed position before us that the appeal filed by the Revenue in quantum proceedings against the order of the Tribunal dated 22nd May, 2013 being Income Tax Appeal No.282 of 2014 was dismissed by order dated 14th September, 2016 of this Court.

(g) In the above view, we cannot understand the grievance of the Revenue. In any case, no substantial question of law arises at this stage as the entire issue is restored to the Assessing Officer for fresh consideration on the issue of penalty. Accordingly, question (ii) as proposed does not give rise to any substantial question of law. Thus, not entertained.

6. <u>Regarding Question No.(iii) :-</u>

(a) It is an undisputed position before us that by order dated 22nd May, 2013, the Tribunal in the quantum appeal on the issue of depreciation in respect of sale and lease back transaction to Maharashtra Esters & Ketones Pvt. Ltd., had decided the issue in favour of the respondent assessee.

(b) Being aggrieved by order dated 22nd May, 2013 of the Tribunal, the Revenue had preferred an appeal to this Court being Income Tax Appeal No.282 of 2014. This Court by order dated 14th September, 2016 dismissed the Revenue's appeal. Thus, on merits the respondent assessee was held entitled to the benefit of depreciation as claimed in respect of sale and lease back transaction with M/s. Maharashtra Esters & Ketones Pvt. Ltd.

(c) Therefore, this question as proposed does not survives. In any case, the question does not give rise to any substantial question of law. Thus, not entertained.

7. The appeal is dismissed. No order as to costs.

(PRAKASH D. NAIK, J.) **(M.S. SANKLECHA, J.)**