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

INCOME TAX APPEAL NO. 1666 OF 2014

The Commissioner of Income Tax-3 ... Appellant

V/s.

NSIL Exports Ltd. ... Respondent

WITH
INCOME TAX APPEAL NO. 1667 OF 2014

The Commissioner of Income Tax-3 ... Appellant

V/s.

NSIL Exports Ltd. ... Respondent

WITH

INCOME TAX APPEAL NO. 1741 OF 2014

The Commissioner of Income Tax-3 ... Appellant

V/s.

NSIL Exports Ltd. ... Respondent

Mr. A.R. Malhotra for the Appellant.
Mr. V.S. Hadade for the Respondent.

CORAM : S.C.DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.
DATE : 24th AUGUST, 2017

P.C.:

. We have heard both the sides. We have perused the order of the Tribunal impugned in these appeals.

2 That is in relation to Assessment Years 2001-2002, 2002-2003, 2003-2004.

3 The Assessee was before the Tribunal challenging three separate orders of the Commissioner of Income Tax (Appeals), all dated 07.03.2013. There were common grounds raised. One of the ground which was raised before the Tribunal and on which submissions were canvassed before the Tribunal as also before us pertains to the payment of inland transportation expenses and commission to foreign parties as per the guidelines issued by the Reserve Bank of India.

04 The facts have been noted in paragraph 3 of the Tribunal's order. The Tribunal noted that the Assessee's name appeared in the report (Volker Committee) appointed by the United Nations Security Council to investigate the administration and management of Oil for Food programme in Iraq. The information was received by the Investigation wing in writing and which according to the Revenue named the Assessee. The report pointed towards the

payment made to the then Iraqi Regime/Iraq Government and which is termed as illicit oil charges. Though, the payments are made under a humanitarian contract but the device and means employed would indicate that this was complete abuse of the Oil-for-Food programme and came within the prohibitions and sanctions imposed by the United Nations.

5 The Tribunal proceeds on the footing that the payments are not admissible for deduction at all by virtue of explanation -1 to Section 37 of the Income Tax Act, 1961.

6 Before us, Mr. Malhotra would submit that the Assessing Officer as also the first Appellate Authority did not invoke this provision at all. He has taken us through the order of the Assessing Officer and particularly, the portion where the Assessing Officer was requesting the Assessee to clarify and explain whether payment of inland transport charges were authorised payment under the United Nations Programme and then there was a correspondence between the Department and the Assessee. The argument of the Assessee is that the reopening of the assessment was bad in law, because the Volker Committee was not appointed by the Indian Government and its report is a property of the United Nations. It is precisely these contentions which have been dealt with to hold that the payment of Rs.1,31,56,323/- should be disallowed and added to

total income because this is not a legal payment.

7 Before the First Appellate Authority as well, the Assessee complained that the Assessing Officer's order is legally and factually untenable. The Assessing Officer's order and with the above observation has been confirmed and we have noted paragraphs 6 and 6.1 at running page 26 of the First Appellate Authority's order.

8 When such was the controversy before the Tribunal and it considered the rival submissions, it held that there is no denial of the fact that the Assessee had supplied the goods under the agreement which has been approved by the United Nations as well as the Indian Authority. The payment of inland transport expenses as explained by the Assessee is towards the transportation of the export goods from the port to the destination. The Tribunal perused the terms of the contract, the obligation of the transportation of the goods from port to the destination and that is sqarely of the Assessee. The Assessee had to arrange the transportation of the goods from the port to the destination. It is pertinent to note that when the payment of transportation is as per the terms of the agreement, then, it cannot be termed as bogus or illegal. The Assessee had placed on record the relevant materials, details and evidence to show that these payments were made to identified parties through Banking Channels and after

approval of the Reserve Bank of India.

9 Thus, when all these details including Bank accounts reflect the payment, the payment cannot be termed as illegal or illicit and therefore, explanation to Section 37(1) of the Income Tax Act cannot be invoked and applied.

10 We have considered an identical controversy and based on same facts, in the revenue's Appeals (Income Tax Appeal Nos. 705, 713, 798 and 1347 of 2014 decided on 09.08.2017).

11 We have dismissed those appeals of the Revenue.

12 However, Mr. Malhotra appearing in the present Appeals would submit that our order passed on 09.08.2017 will not enable us to dismiss these appeals. There are substantial questions of law raised before this Court and we must therefore, admit these appeals.

13 The questions of law and termed as substantial, are reproduced herein below:

> *"A) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in deleting*

the disallowance of inland transportation charges and commission expenses by holding that the assessee has submitted all the relevant details & documentary evidences which is contrary to fact that the assessee did not file, before the Assessing Officer an the CIT(A), necessary documentary evidences to show that the said expenditure was incurred for business expediency?

B) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in deleting the disallowance of inland transportation charges and commission expenses by holding it to be not covered under Explanation to section 37(1) of the Income Tax Act which is contrary to findings of the Assessing Officer & CIT (A) that the assessee failed to prove in evidence that these expenditure were for its business expediency and hence not allowable u/s. 37(1) of the Income Tax Act?

C) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in deleting the disallowance of inland transportation charges and commission expenses on the basis of submission made by the assessee before Income Tax Appellate Tribunal without according due opportunity to the revenue?

D) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal was justified in allowing the assessee to raise a ground of appeal relating to disallowance of deduction u/s. 80HHC of the Income Tax Act, which was not challenged by the assessee before the CIT(A) and had thus attained finality?"

14 Mr. Malhotra fairly submits that on 20.03.2017 an order was passed in

these Appeals and where the following two questions were only proposed as substantial questions of law.

> *"i) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in deleting the disallowance of inland transportation charges and commission expenses by holding it to be not covered under Explanation to section 37(1) of the Income Tax Act which is contrary to findings of the Assessing Officer & CIT (A) that the assessee failed to prove in evidence that these expenditure were for its business expediency and hence not allowable u/s. 37(1) of the Income Tax Act?*
>
> *ii) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in allowing the assessee to raise a ground of appeal relating to disallowance of deduction u/s. 80HHC of the Income Tax Act, which was not challenged by the assessee before the CIT(A) and had thus attained finality?"*

15 At that time, as well this Court and in the detailed order passed on that date namely 20.03.2017 recorded that it is a agreed position between the parties that the impugned order of the Tribunal allowed the Assessee's Appeal before it by placing reliance upon its own decision of a Co-ordinate Bench dated 26.07.2013 in the case of Ajanta Pharma Ltd. It is also an agreed position that Appeals were filed by the Revenue in this Court in the case of Ajanta Pharma Ltd.

16 Therefore, Mr. Hadade is right in urging that the fate of the present appeals would have to abide by order passed in 09.08.2017 (M/s. Ajanta Pharma's Case)

17 In the light of the above agreement and specifically recorded by this Court in the order passed by 20.03.2017, all the more, we are disinclined to accept the arguments of Mr. Malhotra. Our order of 09.08.2017 fully covers the issue. Even the additional question proposed has been answered by the Tribunal and particularly the claim in relation to Section 80HHC. That has been answered by applying ratio of the Judgment of the Hon'ble Supreme Court in the Case of ***Topman Exports V/s. CIT, reported in (2012) 342 ITR page 49(SC)***. The facts in Topman and the present cases are held to be identical. Hence, this judgment binds the Revenue.

18 In the above circumstances, we do not think that the present Appeals need be entertained. They are dismissed, but without any order as to costs as no substantial question of law emerges from the Tribunal's order.

(SMT. VIBHA KANKANWADI, J.) **(S.C.DHARMADHIKARI, J.)**