IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 1716 OF 2014

The Commissioner of Income Tax-I .. Appellant
v/s.
Inox Air Products Ltd. .. Respondent

Mr. Sham Walve a/w Ms. Padma Divakar for the appellant
Mr. Rohan Deshpande i/b Mihir C. Naniwadekar for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.
DATED : 20th MARCH, 2017.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 24th December, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

2. The Revenue urges the following substantial questions of law for our consideration :-

> *Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in allowing the depreciation @ 60% instead of 15% in the case of depreciation on storage tanks, cold converters and transport tanks erroneously considering these to be gas cylinders, thereby contravening the guidelines given under Rule 5 of the Income Tax Rules, 1962?*

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in not holding that while the amount of Rs.6,50,00,516/- prepaid as NPV is equivalent to the future liability of Rs.10,54,93,806/-, the difference of Rs.4,04,93,290/- between the NPV and future liability being actual collections of sales tax, retained in the business by the assessee in perpetuity, without having to pay the same to the State Government, amounts to cessation / remission of liability u/s 41(1) if the Income Tax Act, 1961 and hence taxable as the assessee' income?

3. Regarding Question No.(i) :-

(a) The impugned order while dismissing of the Revenue's appeal before it, placed reliance upon the order dated 9th January, 2012 (Income Tax Appeal (L) No.1014 of 2011) of this Court while dismissing appeal filed by the Revenue from the order of the Tribunal in respondent assessee's own case for A.Y. 2005-06 raising an identical issue. Mr. Walve, learned Counsel appearing for the appellant Revenue very fairly states that for subsequent years also the Revenue has filed appeals from the order of the Tribunal on an identical issue as raised herein and all of them have been dismissed. The last such order which he invites our attention to is in respect of the Assessment Year 2009-10 raising an identical issue in Income Tax Appeal No.1356 of 2014 being dismissed on 23rd January, 2017.

(b) In the above view, for the reasons indicated in our order dated 23rd January, 2017 (Income Tax Appeal No.1356 of 2014) and dated 9th January, 2012 (Income Tax Appeal (L) No.1014 of 201) in Commissioner of Income Tax Vs. Inox Air Products Ltd., the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

4. **Regarding Question No.(ii) :-**

(a) The impugned order of the Tribunal dismissed the Revenue's appeal by following the decision of the special bench of the Tribunal in Sulzer India Ltd.

(b) Mr. Walve, learned Counsel appearing for the Revenue very fairly states that the Revenue's appeal from the order of the Tribunal in Sulzer India Ltd. (supra) was dismissed by this Court reported as Commissioner of Income Tax Vs. Sulzer India Ltd. 369 ITR 717.

(c) In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

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

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