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

WRIT PETITION NO. 2752 OF 2008

M/s. Cabot India Ltd., Mumbai .. Petitioner

v/s.

The Deputy Commissioner of Income-Tax
Range-1(1), Mumbai & Ors. .. Respondents

Mr. Percy Pardiwala, Senior Counsel a/w Mr. Jitendra Jain and Mr. Atul Jasani for the petitioner
Mr. Suresh Kumar for the respondent

CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.

DATED : 13th JULY, 2017

P.C.

1. The reopening notice has been issued on four counts :-

(a) That the interest attributable to capital work in progress allowed as revenue expenditure.

(b) The royalty payment was allowed as revenue expenditure.

(c) The assessee had debited the amount as royalty which includes Cess of Rs.18,09,693/- out of the same, the assessee has paid only Rs.8,99,872/-. Thus, the amount of Rs.9,09,821/- was required to be added back in computing the income. The said amount escaped assessment.

(d) The assessee has added back an amount of Rs.7,67,667/- on account of difference of the additions made on account of un-utilized Cenvat / Modvat credit. Whereas, in the assessment order passed under Section 143(3) of the Act for A.Y. 2002-03, the un-utilized Cenvat / Modvat credit added back for A.Y. 2002-03 was Rs.61,41,914/- and not Rs.62,42,914/-. Thus, the income of assessment to the extent of Rs.1 lakhs has escaped assessment.

2. The first two grounds were also subject matters of reopening of assessment for the earlier assessment year and the said grounds are set aside in another Writ Petition Nos.47 of 2008 & 2586 of 2009. The reopening of assessment on said grounds has been set aside. The same reasons shall apply in the present petition also.

3. It is submitted that with regard to the Cenvat / Modvat credit, against the assessment order the petitioner had preferred an appeal. The said appeal stand allowed by the CIT(A) and the matter was remitted to the Assessing Officer for considering figures afresh. In the said proceedings, all these facts can be gone into.

4. So far as the aspect of an amount of Rs.9,09,821/- escaping the assessment is concerned, it appears from the record itself that the petitioner has paid an amount of Rs.8,99,872/- as on 31st March, 2003 and the amount of Rs.9,09,821/- on 18th December, 2002. The said statement of account filed herein is not denied in the affidavit filed by the respondent. We would have accepted the case of the Revenue if it would have denied the contention of the assessee in the affidavit.

5. In the light of the above, it is not the case that the said item has escaped assessment. The notice is issued merely on the change of opinion of the Assessing Officer, which is not permissible. The impugned notice is quashed and set aside. Rule is made absolute in the above terms. No costs.

(A.M. BADAR, J.) **(S.V. GANGAPURWALA, J.)**