pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.405 OF 2015

M/s. Tesla Technologies and Oxidation Pvt. Ltd. … Appellant
Vs.
Commissioner of Income Tax … Respondent

Mr. S.C. Tiwari a/w Ms Rutuja Pawar for the Appellant.
Mr. N.C. Mohanty for the Respondent.

CORAM : A.S. OKA &
A.K. MENON, JJ.

DATE : 1st NOVEMBER, 2017

P.C.

1 Heard the learned counsel appearing for the appellant. By this Appeal, the Appellant which is a Private Limited Company has taken an exemption to the judgment and order dated 22nd August, 2014 passed by the Income Tax Appellate Tribunal (for short "Appellate Tribunal") by which two Appeals preferred by the Assessee along with Cross Appeals preferred by the Respondent – Department were dismissed.

2 The Appellant – Company filed a return on 19th February, 2009 claiming that the income of the Company was Nil. The case of the appellant was selected for scrutiny. The Appellant - Company had two

offices one at Mumbai and other at Bengaluru. The case of the Respondent – Revenue was that the appellant failed to furnish its true and correct business income. The submission of the Appellant – Assessee was that it had no access to the record at Bengaluru branch office on account of inter-se dispute between the Directors of the Appellant Company. A reference is made to the arbitral proceedings to which the directors of the Appellant are parties. The Assessing Officer held that both the head offices at Mumbai and the branch office at Bengaluru had to be assessed together for income tax and its total income was Rs.66,77,547/-. The order of the Assessing Officer was carried to CIT Appeals by the Appellant by preferring an Appeal. The first Appellate Authority after considering the material on record held that the Assessing Officer was right in determining net profit earned by the branch at Bengaluru of Rs.27,66,334/-. As regards the Mumbai office, the first Appellate Authority observed that similar estimation could not have been made by the Assessing Officer especially when no fault has been found by him with regard to Profit and Loss Account of the Mumbai office. Therefore, while holding that the estimation of profit earned by Bengaluru Branch office made by the Assessing Officer was correct, the Tribunal interfered with the order of the Assessing Officer as regards the head office at Mumai. That is how both the Appellant - Assessee and the Respondent – Revenue came in appeal against the order of the first Appellate Authority before the Appellate Tribunal. By the impugned judgment and order, the Appeals preferred by the Appellant – Assessee and the Appeals preferred by the Respondent – Revenue have been dismissed.

3 The submission of the learned counsel appearing for the Appellant is that along with an application for additional evidence, a copy of Award of the learned Arbitrator made on 11th April, 2013 was placed before the Appellate Tribunal. Under the said Award, a direction was issued by the learned Arbitrator to one of the Directors enjoining him to submit to the Income Tax Authorities all the particulars regarding the accounts of the Bengaluru branch office. He submitted that this is a case where the income earned by the Branch office at Bengaluru is misappropriated by one of the Directors. Relying upon the additional substantial questions of law tendered across the Bar, he urged that the income which is misappropriated by a Director before it actually reaches the Appellant - Company cannot be assessed as business income of the Appellant - Assessee. He submitted that though Award was sought to be produced by way of an application of additional evidence, the same has been completely ignored and brushed aside by the Appellate Tribunal. He submitted that the Appellate Tribunal committed an error by holding that the dispute between the

Directors was an internal dispute of the Appellant with which the Department was not concerned. The learned counsel, therefore, submitted that the entire approach of the first Appellate Authority as well as the Appellate Tribunal is erroneous.

4 We have given careful consideration to the submissions. Firstly, we may note here that in paragraph 5 of the impugned judgment, the Appellate Tribunal has recorded in some detail the submissions made on behalf of the Appellant - Assessee. Admittedly, paragraph 5 does not record any submission made on behalf of the Appellant - Assessee to the effect that there is any misappropriation made of the income of the Company by one of its Directors. This case is sought to be made out for the first time before this Court. The contention raised by the learned counsel appearing for the appellant as regards misappropriation by one of the Directors is a contention based on the factual aspects which ought to have been pleaded at the earliest. Such a contention cannot be allowed to be raised at this stage.

5 Before none of the Authorities, the Appellant - Company has placed on record the efforts made to secure the documents allegedly lying in Bengaluru Office. We have perused the Arbitral Award which is referred in the impugned judgment. The Award indicates that there was an internal dispute amongst the directors of the Appellant - Company.

In our view, the Appellate Tribunal has rightly observed that this internal dispute cannot be a ground for non furnishing proper details by the Appellant - Company before the Assessing Officer. The Tribunal observed that the Directors of the Assessee Company were not individually responsible for furnishing accounts of the branches of the Company under their control, but the Company as a whole was responsible to furnish the correct details of the income. By the order dated 22nd January, 2010 a Sole Arbitrator was appointed. The Award was made by 11th April, 2013 issuing certain directions to one of the Directors of the Company. Admittedly, the Award is not put to execution. Once the finding of the Appellate Tribunal is accepted that the internal dispute between the Directors is no excuse, there is no reason to find any fault with the reasons recorded by the Appellate Tribunal. The Appellate Tribunal has taken into consideration the additional material in the form of Award and found that the dispute covered by the Award was not at all relevant or material.

6 Therefore, there is no merit in the Appeal and no substantial questions of law arises. The Appeal is dismissed.

(A.K. MENON, J) **(A.S. OKA, J)**