IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 124 OF 2017

THE PRINCIPAL COMMISSIONER OF INCOME TAX, PANAJI., ... Appellant

Versus

VELINKAR BROTHERS., ... Respondent

Ms. Amira Abdul Razaq,Advocate for the appellant.

Coram:- SHANTANU S. KEMKAR & PRITHVIRAJ K. CHAVAN, JJ.

Date:- 29th January 2018

P.C.

Heard learned counsel for the appellant on the question of admission.

2. This appeal under Section 260-A of the Income Tax Act, 1961 has been filed against the order dated 22nd November 2016 passed by the Income Tax Appellate Tribunal, Panaji in ITR No.131/PAN/2016.

3. We find that the Tribunal dismissed the appeal of the Revenue in which the challenge was to the action of the Commissioner of Income Tax (Appeals) in deleting the addition on account of under-pricing of sales to its sister concern, which is entitled to exemption under Section 10B of the Income Tax Act, by observing thus:-

"Para 4: At the time of hearing, it was fairly agreed by both the sides that in respect of Revenue's appeal, which is on merits, the issue was squarely covered by the decision of the Coordinate Bench of this Tribunal in assessee's own case for the Assessment Year 2008-09 in ITA No.18/PNJ/2014 and C.O.No.13/PNJ/2014, dated 30.05.2014 wherein the Coordinate Bench of this Tribunal has held that no under-invoicing or under-pricing has been done by the assessee of its sales made to sister concern. In these circumstances, respectively following the decision of the Coordinate Bench of this Tribunal in assessee's own case for the Assessment Year 2009-09 (supra), the finding of the Commissioner of Income Tax (Appeals) on this issue stands confirmed. It is also noticed that the Commissioner of Income Tax (Appeals) has also followed judicial discipline in following the decision of the Coordinate Bench of this Tribunal in the assessee's own case for the Assessment Year 2008-09, to delete the addition. In these circumstances, we find no reason to interfere in the order of the Commissioner of Income Tax (Appeals). In the result, appeal of the Revenue stands dismissed.

Para 5: At the time of hearing, it was submitted by the Authorized Representative of the assessee that as the issue on merits has been decided in favour of the assessee, he does not wish to press the Cross Objection in respect of reopening of assessment. Consequently, the Cross-Objection filed by the assessee stands dismissed as withdrawn".

4. In view of the aforesaid finding, it is clear that the issue, which was raised by the Appellant-Revenue before the Tribunal in the appeal was already covered by a decision of the Coordinate Bench of the Tribunal. It is not the case of the appellant-Revenue that the said order referred to in the impugned order passed by the Coordinate Bench has been challenged in appeal before this Court and that the appeal has been admitted.

5. In the circumstances, we find that no infirmity in the order passed by the Tribunal. On the other hand, what we find is that the questions, which are directly raised in this appeal, were considered and the appeal filed by the Revenue before this Court was not admitted on these questions raised and the said Tax Appeal No.55/2015 was admitted by this Court on a different question but not on the question raised in this appeal.

6. In the circumstances, we do not find any ground to allow this appeal and take different view than the view taken by the Division Bench in the order dated 21st August, 2015 in Tax Appeal No.55/2015 which though, has been admitted but not on the question of law raised in this appeal but on different question of law.

7. As a result, the appeal fails and it is hereby dismissed.

PRITHVIRAJ K. CHAVAN, J. SHANTANU S. KEMKAR, J.

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