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

INCOME TAX APPEAL NO. 1129 OF 2015

The Pr. Commissioner of Income Tax-5 .. Appellant

v/s.

Spicer India Ltd. .. Respondent

Mr. Sham Walve for the appellant
Mr. Sanjay M. Shah for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 18th APRIL, 2018.

P.C.

1. Mr. Walwe, learned Counsel appearing in support of the appeal at the very outset states that although the tax effect involved in the present appeal is Rs.11.30 lakhs as mentioned in paragraph 12 of the Memo of Appeal, the present proceedings emanate from an audit objection. Therefore, this appeal is excluded from the purview of the directions given in CBDT Circular No.21/2015 dated 10th December, 2015. Thus, he has been instructed to press the present appeal.

2. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 20th October, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is

in respect of Assessment Year 2003-04.

3. The Revenue urges only the following question of law for our consideration :-

> *(i) Whether on the facts and circumstances of the case and in law, the CIT(A) and the Tribunal was justified in deleting the disallowance of depreciation of Rs.11,30,345/- when the assessee was liable to reduce Rs.45,21,379/- due to exchange gain from the cost of machinery and subsequent depreciation on it?*

4. The respondent is engaged in manufacturing of axles and propeller shafts and assemblies. On 31st March, 2006, the assessment was completed under Section 143(3) of the Act for the Assessment Year 2003-04. Thereafter, the Assessing Officer re-opened the assessment for the subject assessment year on the ground that gain on foreign exchange conversion of loan liabilities, would require corresponding change in the value of the fixed assets. This not having been done, has resulted in the respondent claiming excess depreciation to the extent of Rs.11.30 lakhs.

5. Consequent to the above re-opening, by an order dated

31st December, 2010, the Assessing Officer passed an order under Section 143(3) of the Act read with Section 147 of the Act, adding the excess depreciation which has been disallowed to the extent of Rs.11.30 lakhs to the assessee's income.

6. Being aggrieved, the respondent filed an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 23rd July, 2013, the CIT(A) allowed the respondent assessee's appeal on the reopening notice being without jurisdiction and also on merits by placing reliance upon the amended Section 43A of the Act. On merits, it held that in terms of amended Section 43A of the Act, the adjustment has to be done in the value of fixed assets only where payment is made on account of variation in the exchange rate. This can not be done on notional basis.

7. The Revenue being aggrieved, filed an appeal before the Tribunal. The Tribunal by the impugned order dismissed the Revenue's appeal by *inter alia* holding on merits that in view of amended Section 43A of the Act, the gain / loss in the foreign exchange fluctuation on loan liability being notional as no actual payment was made, section 43A of the Act as amended w.e.f. 1st April, 2003 would not require any

adjustment in the cost of the fixed assets. This is so as no actual payment has been made by the assessee during the previous year relevant to the subject assessment year. The impugned order further places reliance upon the decision in ***Commissioner of Income Tax Vs. Woodward Governor India P. India, (2009) 312 ITR 254***.

8. We find that the impugned order of the Tribunal has found that no payment was made during the previous year relevant to the subject assessment year. The Apex Court in *Woodward Governor India P. India,* (supra) while dealing with the amended provisions of Section 43A of the Act has held that "…. with effect from 1st April, 2003 such actual payment of the decreased / enhanced liability is a condition precedent for making adjustment in the carrying amount of the fixed asset." The aforesaid observation of the Apex Court apply to the facts of the present case. In view of the decision taken by following the Apex Court decision in *Woodward Governor India P. India,* (supra), the impugned order of the Tribunal did not deal with the issue of the re-opening notice being without jurisdiction.

9. The question as proposed does not give rise to any substantial question of law as it stands concluded by the decision of the Apex Court

in the case of *Woodward Governor India P. India, (*supra) and also on the bare reading of the amended Section 43A of the Act. Thus, not entertained.

10. Accordingly, the appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J.) **(M.S. SANKLECHA, J.)**