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HIGH COURT OF CHHATTISGARH, BILASPUR

ITR No. 98 of 1995

Commissioner of Income Tax, Jabalpur

---- Petitioner

Versus

M/s Krishna Oil Extraction Ltd., Raipur

---- Respondent

ITR No. 64 of 1996

Commissioner of Income Tax, Jabalpur

---- Petitioner

Versus

M/s Krishna Oil Extraction Ltd., Raipur

---- Respondent

ITR No. 5 of 1996

Krishna Oil Extraction Ltd., Raipur

---- Petitioner

Versus

Commissioner of Income Tax, Jabalpur

---- Respondent

For Petitioner/Revenue : Shri Amit Chaudhary, Advocate
For Respondent/Assessee : Shri Om Kukreja, Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

P. R. Ramachandra Menon, Chief Justice

30.08.2019

1. These matters are pending consideration before this Court for more than two decades, on reference made by the Income Tax Appellate Tribunal,

pursuant to the applications preferred by both the Revenue and also by the Assessee in terms of Section 256(1) of the Income Tax Act, 1961.

2. ITR No.98 of 1995 and ITR No.64 of 1996 are based on the reference applications preferred by the Revenue; whereas the other one i.e. ITR No.5 of 1996 is at the instance of the Assessee.

3. The Assessee, who is a Private Limited Company registered under the relevant provisions of the Companies Act, was deriving income from the manufacture and sale of oil who filed the return debiting the 'disputed amount' to its current year's accounts in respect of the Sales Tax and Entry Tax, which in fact was the liability for the earlier years. The Assessing Officer, holding that, there was no dispute with regard to the liability which had occurred in the past, for the reasons stated, disallowed the same and added it for the purpose of computation of the total income and passed order fixing the tax liability; which was upheld by the Appellate Authority. But when the proceedings were taken up before the Tribunal, the stand of the Assessee was upheld and the appeal was decided accordingly, though relief was declined on some heads as specified therein. This made the Revenue as well as the Assessee to prefer separate applications under Section 256(1) of the Income Tax Act, 1961 seeking for reference, pointing out the question of law involved, which stands referred to be answered by this Court.

4. The question of law framed by the Department in ITR No.98 of 1995 is as follows :

> “Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that

> the prior period expenditure on account of sales-tax and Entry-tax can be said to be an expenditure laid out or expended for the purposes of the assesse's business for the period relevant for the asstt. Year 1990-91, and is an allowable deduction under section 37 of the Income Tax Act, 1961 ?”

Almost similar question of law was framed in the other case i.e. ITR No.64 of 1996, at the instance of the Revenue, which is extracted below :

> “Whether on the facts and in the circumstances of the case the Tribunal was justified in law in holding that the prior period expenditure on account of Sales tax and entry tax can be said to be an expenditure laid out of expended for the purpose of assessee's business for the period relevant to A.Yr. 90-91 is an allowable deduction while computing book profit u/s 115J of the Income-tax Act, 1961 ?”

After arriving at a finding as to the involvement of question of law, which required to be answered, the Tribunal allowed the above applications and refereed the questions framed by the Department as extracted above, in turn, leading to the above ITR No.98 of 1995 and ITR No.64 of 1996.

5. Coming to the application preferred by the Assessee under Section 256(1) of the Income Tax Act, 1961, the questions framed by the Assessee were in the following terms :

> “1. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the loss as it appears in 205(1) first proviso clause (b) of the Companies Act 1956 read with section 115J of the Income Tax Act 1961, means excluding depreciation ?

2. Whether on the facts and in the circumstances of the case, the interpretation of word 'loss' sought to be put on section 115J of the Income Tax Act by the Tribunal is correct in Law ?

3. Whether on the facts and in the circumstances of the case the Tribunal was right in law in placing reliance on judgement of V.V. Trans Investment (P) Ltd. -vs- C.I.T. & others (1994) 207 ITR 508 ?

4. Whether on the facts and in the circumstances of the case the judgement of Andhra Pradesh High Court in case of V.V. Trans Investment (P) Ltd. -vs- C.I.T. & others (1994) 207 ITR 508 was a binding precedence for Income Tax Appellate Tribunal, Nagpur ?

5. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was under an obligation to pay advance Tax on book profit determined u/s 115J ?”

The Tribunal observed that the questions No.1 to 4 framed by the Assessee had already been referred in the Assessee's own case as per order dated 20.07.1995 in R.A. No.87/Nag/95 (as referred to ITR No.98 of 1995). With regard to the remaining question i.e. question No.5 framed by the Assessee, the Tribunal was of the opinion that, it also required reference, but on a 'modified form' and accordingly, the said question was re-framed by the Tribunal as follows :

“Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the Assessee was liable to pay interest under Sections 234B and 234C of the Income Tax Act, 1961 ?”

This question was referred accordingly; which is the subject matter of consideration in ITR No.5 of 1996.

6. When the above matters came up for consideration earlier on 18.08.2010, it was brought to the notice of this Court that a similar question in **M/s Dynamic Orthopedics Pvt. Ltd. v. Commissioner of Income Tax, Cochin, Kerala** was already referred by the Apex Court to Larger Bench vide order dated 16.02.2010 and in the said circumstances, the above cases were ordered to be listed after ascertaining the position of the case which was pending consideration before the Larger Bench.

7. Later, on 29.09.2011, it was confirmed that the matter was still pending before the Larger Bench of the Apex Court as Civil Appeal No.8419 of 2003 (**M/s Dynamic Orthopedics Pvt. Ltd. v. Commissioner of Income Tax, Cochin, Kerala**); when the above cases were adjourned to be listed after disposal of the civil appeal; reasonably presuming that the issue might get finalized in a short while. The matters have been listed today, to ascertain the position as on date.

8. Shri Om Kukreja, learned counsel appearing for the Assessee submits that the similar question/issue pending consideration before the Larger Bench of the Apex Court is still to be finalized. The matters were listed before the Apex Court along with other connected appeals on 11.07.2019, on which day, they came to be adjourned to 18.07.2019, but are yet to be listed further for final hearing and disposal.

9. In the above circumstances, we are of the view that the picture would be clear and the legal question will stand answered, once final verdict is

passed by the Larger Bench of the Apex Court in the matter as mentioned above. The law to be declared by the Apex Court will naturally govern the issues involved in these cases as well and as such, we find it appropriate to close these reference matters, recording the said position. If for any reason, any question/point remains to be unanswered, requiring interference of this Court to have it answered separately, in the light of law declared by the Apex Court, we make it clear that either the Revenue or the Assessee, will stand permitted to file an interlocutory application before this Court to get these cases re-opened, to be dealt with in appropriate terms.

10. Subject to the above, these reference applications stand closed. The Registry is directed to communicate the outcome to the Tribunal, in accordance with the relevant provisions of law, to be part of the records of the Tribunal.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

Yogesh