

IN THE HIGH COURT OF BOMBAY AT GOA**TAX APPEAL NO. 56 OF 2010**

The Commissioner of Income Tax,
Aayakar Bhavan,
Patto Plaza,
Panaji- Goa.

.... Appellant.

V e r s u s

M/s. V. M. Salgaoncar and Bros. Ltd.
Vasco da Gama,
Goa – 403802.

..... Respondent

Ms. Amira Razaq, Standing Counsel for the Appellant.
Mr. A.F. Diniz with Mr. Ryan Menezes, Advocates for the Respondent.

**Coram:- M. S. SONAK &
C. V. BHADANG, JJ.**

Date:- 07th November, 2019.

JUDGMENT (Per M. S. Sonak, J)

Heard the learned counsel for the parties.

2. This matter was heard yesterday and was posted today being part heard.

3. This appeal was admitted on 11/8/2010 on the following substantial question of law:

a) Whether in the facts and in the present circumstances of the case, the ITAT was right in diminishing the revenue's appeal based on the stand taken in the earlier part of the order that truck hire charges etc. are not to be treated as receipts within the meaning of Section 80 HHC (baa) and hence declining to give a decision whether net or gross receipts are to be excluded while applying provisions of 80HHC explanation to (baa) where in the law is settled and the Hon'ble High Court Bombay in the case of CIT Vs. Asian Star Company has held that the gross receipts are to be excluded while applying the provisions of section 80HHC of the IT Act?

4. Mr. Diniz, the learned counsel for the respondent points out that this appeal is directed against the common judgment and order dated 26/2/2010 made in I.T.A nos. 283/2004 and I.T.A no.279/2004. He points out that I.T.A No.283/2004 was instituted by the respondent and I.T.A No.279/2004 was instituted by the Revenue against common judgment and order dated 12/8/2004 passed by the Commissioner

(Appeals). He points out that both parties had agreed before the ITAT that in the event I.T.A no. 283/2004 instituted by the respondent herein were to be decided in favour of the respondent herein, than, I.T.A no.279/2004 instituted by the Revenue would not survive.

5. Mr. Diniz, further points out that I.T.A no.283/2004 was in fact decided by the ITAT in favour of the respondent herein and consequently even I.T.A no.279/2004 instituted by the Revenue was dismissed as not surviving.

6. He points out that as against the common order, in the two appeals, the Revenue instituted two Tax Appeals, namely, I.T.A no.59/2010 against the order in I.T.A no.283/2004 and the present I.T.A no.56/2010 in I.T.A no.279/2004.

7. Mr. Diniz points out that I.T.A no.59/2010 was since withdrawn by the Revenue on 5/11/2019, since the tax effect involved in the said appeal was less than rupees one crore. He, therefore, submits that the

present appeal which is again, against the same order will clearly not survive.

8. In fact, we had posted this matter today under the caption “part heard”, in order to enable the learned counsel for the Revenue to take instructions in this regard.

9. The record indicates that the Assessing Officer in the present case had refused to grant any deduction claimed for by the assessee. Therefore, aggrieved by the same, the assessee had instituted an appeal before the Commissioner (Appeals).

10. The Commissioner (Appeals) partly held in favour of the assessee. The Commissioner (Appeals) held that the assessee was entitled to deductions, but on the net basis and not on gross basis.

11. The assessee thereupon instituted I.T.A no.283/2004 urging that the deductions in their entirety ought to have been granted. The Revenue

also instituted I.T.A no.279/2004 urging that the grant of even limited relief by the Commissioner (Appeals) was not warranted in the facts and circumstances of the case.

12. The two appeals were taken up together by the ITAT and in para 3 of the judgment and order dated 26/2/2010, it is clearly recorded that both parties agreed that in the event of deciding the aforementioned issues in favour of the assessee, departmental appeal does not survive for consideration.

13. Ultimately, by the impugned judgment and order dated 26/2/2010 the assessee's appeal was allowed in its entirety and therefore nothing really survived in ITA no.279/2004 instituted by the revenue.

14. By virtue of withdrawal of Tax appeal no.59/2010, obviously, the view taken by the ITAT in so far as the assessee's case is concerned, has attained finality, may be not on law, but inter partes. In these circumstances, it is obvious that the present appeal will not survive. The

grant of any relief in this appeal will not enure for the benefit of the Revenue since, on the main issue, the order of the ITAT has already attained finality inter partes.

15. Besides, we note that the valuation in this appeal is indicated as “above five lakhs”. There is no clarity as to what is the precise valuation. The valuation in Tax Appeal no.59/2010 which was since withdrawn, was Rs.50 lakhs. Prima facie, we are unable to comprehend as to how the tax effect for the present appeal will exceed Rs.50 lakhs. This is, therefore, a case where the Revenue, on its own, could have withdrawn this appeal taking into consideration the circular of CBDT dated 8/8/2019.

16. Be that as it may, for the aforesaid reasons, this appeal does not survive. The same is accordingly disposed off.

17. After this order was dictated, Ms. Razaq states that the department is considering recall of the order dated 5/11/2019 in TXA No.59/2010 as there might be some mistake in so far as the valuation is concerned. As

and when such an application is made in the said appeal, there is no doubt that the same will be considered in accordance with law. For the present, however, we dispose of the present appeal for the aforesaid reasons.

C. V. BHADANG, J.

M. S. SONAK, J.

ap/-