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

INCOME TAX APPEAL NO. 1188 OF 2016

Pr. Commissioner of Income Tax-1 .. Appellant
v/s.
M/s. Tata Communications Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. Jehangir D. Mistri, Senior Counsel a/w Mr. Anil R. Wani, Ms. Supriya S. Devergudi I/b ANS Law Associates for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.
DATED : 21st JANUARY, 2019

P.C.

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short). The issues concern the respondent assessee company for the Assessment Year 2001-02. The Revenue has framed multiple questions. However, the principal issues raised by the Revenue before us are three, which can be summarized in terms of following questions.

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing a sum of Rs.5,17,29,000/- by way of capital loss ?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting disallowance of a claim under Section 80IA of the Income Tax Act, 1961?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting disallowance of

depreciation of Rs.1.07 crores made by the Assessing Officer by adjusting the Written Down Value (WDV) of certain assets of the company ?

2. Question no.(i) noted above was the most hotly contested question by the Revenue and it revolves around the assessee's claim of Rs.5.17 crores (rounded of). The assessee having claimed such loss as a business loss pointing out that the assessee had made investment in the shares in one M/s. New ICO Global Ltd. During the period relevant to the period under consideration, the assessee had written off investment to the tune of Rs.5.17 crores on account of diminishing of value of the shares and claimed the same as a business loss. The Assessing Officer and CIT(A) rejected such a claim. When the issue, therefore, reached to the Tribunal, the assessee first contended that the loss was a revenue loss and, therefore, should be granted as a business loss. The Tribunal rejected such a contention of the assessee holding that the loss suffered was on capital account. The assessee raised an alternative contention and argued that in any case, such loss cannot be denied as a capital loss. Against the decision of the Tribunal holding that the loss was on capital account, the assessee has filed Income Tax Appeal No.111 of 2016 and such appeal is admitted. The Tribunal however, accepted the assessee's alternative contention. In the process, the Tribunal rejected the Revenue's contention that the loss cannot be

allowed in view of Section 46(2) of the Income Tax Act, 1961 ("the Act" for short).

3. Having heard learned Counsel for the parities and having perused documents on record, we notice that the assessee having made investment and suffered losses in the process, had claimed such loss as a business loss. The Tribunal instead treated such loss on capital account and was urged to examine the alternative contention of the assessee that such loss in any case, would be recognized as a capital loss. The Tribunal merely accepted the same making reference to the decisions of the Supreme Court and also referring to Section 46(2) of the Act. We do not find any error in the view of the Tribunal. If the loss suffered by the assessee was treated as capital loss, there is nothing on record to hold that the assessee was not entitled to claim the same as such. Claim of the assessee would also get support from Section 46(2) of the Act. Section 46(1) of the Act provides that notwithstanding anything contained in Section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of Section 45. In this context, Section 46(2) of the Act provides as under :-

> *"46(2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48."*

4. Coming to question no.(ii), we notice that the Tribunal has merely remanded the issue before the Assessing Officer for fresh consideration after making necessary verification, as was done in the earlier years. No question of law in this respect, therefore, arises.

5. Question no. (iii) pertains to rejection of claim of depreciable asset made by the Assessing Officer and confirmed by the CIT(A). The assessee has pointed out that in any case, such adjustment was carried out in the subsequent year. The Tribunal noted that in the later year, the assessee had *suo-moto* made necessary adjustment and reduced its cost of depreciable asset. The Tribunal, therefore, held that there would be no revenue loss. The Tribunal, therefore, while accepting the assessee's contention, directed the Assessing Officer to verify necessary facts before granting relief. We do not find any reason to

interfere. The Revenue does not dispute that the assessee had made adjustment in the claim of its depreciable asset in the later year. In the later year, the Revenue having accepted such adjustment, enforcing such adjustment in the present year also may amount to taxation the same income twice. In any case, the Tribunal recorded the issue is remained neutral. No question of law arises.

6. Tax appeal is dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**