

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

INCOME TAX APPEAL NO. 1166 OF 2017
WITH
INCOME TAX APPEAL NO. 1172 OF 2017
WITH
INCOME TAX APPEAL NO. 1169 OF 2017
WITH
INCOME TAX APPEAL NO. 1170 OF 2017

National Refinery Pvt. Ltd. .. Appellant

v/s.

Asst. Commissioner of Income-Tax,
Circle 5(2) Respondent

Mr. Vipul B. Joshi a/w Ms. Namrata Kasale for the appellant
None for the respondent

**CORAM : M.S. SANKLECHA &
NITIN JAMDAR, J.J.**

DATED : 6th NOVEMBER, 2019

P.C.

1. These four appeals under Section 260A of the Income Tax Act, 1961 (Act) challenge the impugned order dated 28th September, 2016 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order dated 28th September, 2016 is a common order relating to Assessment Years 2005-06, 2007-08, 2008-09 and 2009-10. Thus, the four appeals.

2. The appellant assessee has urged the following identical questions of law in all the four appeals :-

“(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in disallowing the claim of legal expenses?”

“(ii) Whether on the facts and in the circumstances of the case and in law, the order of the Tribunal disallowing legal expenses is justified when the Tribunal has proceeded on erroneous factual basis that it was not shown that the Directors / shareholders were subjected to legal proceedings in connection with the activities carried out by them during the normal course of carrying on business of the Appellate Company?”

“(iii) Whether on the facts and in the circumstances of the case and in law, the order of the Tribunal is perverse in as much as it is based on extraneous, impermissible and irrelevant considerations, while ignoring the relevant material and considerations?”

“(iv) Without prejudice to the above and in any event, whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have allowed appropriate proportion out of the legal expenses claimed, instead of disallowing the entire expenses ?”

Although multiple questions have been raised, the basic issue is dis-allowance of legal expenses claimed to be incurred by the appellant company in all the four assessment years under Section

37(1) of the Act. As the facts (save the amount of legal expenses claimed in each of the assessment years) and the law applicable are identical in all the four appeals, at the request of the parties the facts in Income Tax Appeal No.1166 of 2017 relating to Assessment Year 2005-06 are being referred to as representative of facts in all the four appeals. It is agreed between the parties that the view taken on the above fact will equally apply in the other three appeals.

3. The appellant assessee is engaged in the business of melting, assaying, refining and fabrication of precious metals. For the Assessment Year 2005-06 the appellant filed on 30th October, 2005 its return of income declaring an income of Rs.12.36 lakhs. During scrutiny, the Assessing Officer noticed that legal expenses to the extent of Rs. 11.72 lakhs out of Rs. 16.50 lakhs had been claimed in connection with complaints filed by one group of shareholders against the other group of shareholders / directors. The Assessing Officer found on facts that above expenses were incurred not by the company for the purpose of carrying out its business but for the purpose of defending its Directors / Shareholders in respect of complaints filed against them by another group of Shareholders.

Thus, holding in its order dated 31st December, 2017 passed under Section 143(3) of the Act that the legal expenses of Rs.11.72 lakhs cannot be allowed under Section 37 of the Act and added the same to determine the taxable income.

4. Being aggrieved with the order dated 31st December, 2017, the respondent filed an appeal to the Commissioner of Income Tax (Appeals)[CIT(A)] amongst other issues, one was the issue of disallowance of legal expenses of Rs. 11.72 lakhs. By an order dated 10th December, 2009, the CIT(A) dismissed the respondent's appeal on the issue of legal expenses. This on a finding of fact that there was a dispute *inter se* between its shareholders over the management and control of the appellant company. Thus, the litigation expenses incurred by the appellant to the extent of Rs. 11.72 lakhs was not for carrying out its business but expenses incurred for one group i.e. Directors / Shareholders in their individual capacity and these expenses had nothing to do with the running of the appellant company. Further, it also upheld the observation of the Assessing Officer that the appellant had not furnished details of the legal expenses and nature of services rendered by the professionals. In the

above circumstances, the order dated 31st December, 2017 of the Assessing Officer to the extent of disallowing of Rs. 11.72 lakhs as legal expenses under Section 37 of the Act was upheld.

5. Being aggrieved by the order dated 10th December, 2009, the appellant filed an further appeal to the Tribunal. By the impugned order dated 28th September, 2016, the Tribunal on facts found that there was a dispute between two groups of shareholders, primarily for the management and control of the appellant company. It found that the appellant has not shown that the concerned Directors / Shareholders for whom the legal expenses were incurred were subjected to legal proceedings only in view of their conduct in carrying out the appellant's business. Further, it holds that there is nothing on record to indicate that the Directors / Shareholders on whom legal expenses were incurred by the appellant were subjected to legal proceedings in connection with their activity of carrying out the business of the appellant company. Thus, upholds the view of the lower authority that these expenses were not be allowed as an expenditure under section 37 of the Act for carrying out the business of the appellant company.

6. Being aggrieved by the impugned order dated 28th September, 2016 which is a common order for all the four subject assessment years, the appellant has filed three appeals.

7. Mr. Joshi, learned Counsel appearing in support of the appeals submits that these legal expenses have been incurred by the appellant company in protecting the Shareholders / Directors as well as the company in criminal proceedings as well as proceedings before the Company Law Board. It is submitted that these expenses were incurred to ensure good name of the company and for the purpose of carrying out its business. This it is submitted is evident from the fact that proceedings were also commenced against its Auditors and Company Secretary. Thus, the appeal require admission.

8. We find that all the authorities under the Act have come to a finding of fact that the legal expenses incurred by the appellant company was not for the purpose of carrying out its business and, therefore, was not allowable as expenditure under Section 37 of the Act. It held that these legal expenses were incurred so as to protect the Directors / Shareholders of the company in respect of the

complaints filed against them in their individual capacity and not in respect of their conduct in the course of carrying on the business of the appellant company. In fact, the complaint filed before the Chief Metropolitan Magistrate Court has been made against the Directors / Shareholders in individual capacities. The entire dispute between the various group of shareholders was only to acquire the management and control of the appellant company and, therefore, these expenses are not expenses incurred for and on behalf of the company but expenses incurred for the Directors / Shareholders for their individual benefit so as to retain control and management of the appellant company. The Tribunal has observed the fact that legal proceedings were also commenced against its Auditors / Company Secretary were only on off-shoot of the *inter se* dispute between different shareholders of the appellant company. In fact, this Court while admitting a criminal Writ Petition bearing No. 2052 of 2004 on 27th April, 2005, did *inter alia* observe that the complaints have been filed so as to settle personal scores between the parties. It thus noticed that the appellant company was no way involved in the legal proceedings taken against the Directors / Shareholders in their individual capacities. Moreover, it is pertinent to note that the

Assessing Officer as well as the CIT(A) recorded the fact that the details of the nature of the legal expenses was not forthcoming from the appellant. In the aforesaid facts, the view taken by the Authorities under the Act including the Tribunal, is a possible view on facts and cannot be said to be perverse. In these circumstances, the questions as proposed in all the four appeals do not give rise to any substantial question of law. Thus, not entertained.

9. Therefore, the four appeals are dismissed. No order as to costs.

(NITIN JAMDAR, J.)

(M.S. SANKLECHA, J.)