

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

WRIT PETITION NO.3321 OF 2018

Piramal Glass Pvt. Ltd.

.. Petitioner

v/s.

Dy. Commissioner of Income Tax-7(3)(2),
Mumbai & Ors.

.. Respondents

Mr. Jehangir Mistri, Senior Counsel a/w Mr. Madhur Agarwal I/b Mr.
Atul Jasani for the petitioner
Mr. N.C. Mohanty for the respondents

**CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.
DATED : 11th JANUARY, 2019**

P.C.

1. This petition is filed by the assessee in order to challenge an order dated 25th July, 2018 passed by the Income Tax Appellate Tribunal ("the Tribunal" for short) in an application for rectification filed by the petitioner. Brief facts are as under :-

2. The petitioners filed its return of income for Assessment Year 2011-12. The Assessing Officer carried out scrutiny assessment, which has given rise to multiple grievances at the hands of the petitioner. One of the issue was the decision of the Assessing Officer to disallow interest

expenditure of Rs.73.87 lakhs claimed by the assessee under Section 36(1)(iii) of the Income Tax Act, 1961 ("the Act" for short).

3. This issue was raised by the petitioner in the appeal before the Tribunal in following manner :-

“On the facts and in the circumstances of the case and in law, the AO erred in disallowing proportionate interest on borrowed funds of Rs.73,87,875 on the alleged ground that the outstanding receivables from a subsidiary company on account of sales, technical fees, etc. are in the nature of interest free advances and such advancing of funds is not for business purpose.”

4. The Tribunal disposed of the assessee's tax appeal by judgment dated 04.01.2017. Several findings were rendered by the Tribunal in the said judgment. With respect to the assessee's contention regarding dis-allowance of Rs.73.87 lakhs under Section 36(1)(iii) of the Act, the Tribunal remanded the issue back to the Assessment Officer making following observations :-

“It can be observed that as against the income of Rs.10.50 crores earned by assessee during the year, the outstanding receivables are at a much higher figure of Rs.12.35 crores, which prima facie reveals that the receivables represent outstanding for more than one year. Further, clause (i)(c) of explanation to Section 92B covers 'receivables' as international transaction w.e.f. 01.04.2002. Therefore, we are of the view that benchmarking of the same could have been done by comparing credit period allowed by assessee for other receivables i.e. internal CUP could have been used to benchmark this transaction. The assessee has relied upon the order

of Tribunal in assessee's own case for 2006-07, ITA No.8360/Mum/2018 order dated 16/12/2016. But a perusal of paragraphs 20 to 25 of the said order reveals that Tribunal has relied firstly upon order for AY 2001-02 and secondly upon the fact that TP adjustment qua these transactions was already made by the TPO and disallowing the same would amount to double deduction. We also find that the assessee was allowed relief in AY 2001-02 on account of 'commercial expediency' and following Apex Court judgment in S.A. Builders Vs. CIT 288 ITR 1. But the facts are different here. No TP adjustment has been made for the impugned transaction and secondly the outstanding amount represent 'receivables' on account of debtors for sales / technical fees as per the contention of the assessee. Therefore, on the facts and circumstances of the case, we deem it fit to restore this issue back to the file of AO for fresh adjudication in proper perspective including benefits derived by AE on account of receivables vis-a-vis normal debtors of the business. The assessee is directed to cooperate with the lower authorities forthwith to substantiate its claim forthwith failing which the AO shall be at liberty to adjudicate the same on the basis of material available on record."

5. The petitioner thereafter filed an application for rectification before the Tribunal limited to this aspect of the matter, primarily contending that the sole question raised by the assessee on the said issue was correctness of the Assessing Officer making disallowance of the interest expenditure of Rs.73.87 lakhs. The Assessing Officer had not invoked Transfer Pricing Mechanism and the Tribunal therefore, while remanding the issue back before the Assessing Officer for fresh consideration, could not have been directed examination of Transfer Pricing Mechanism. This application came to be dismissed by the Tribunal by an order which is impugned in this petition.

6. Before examining the issues further, we may also record two important developments. Firstly, the petitioner has filed an independent Tax Appeal No. 1255 of 2017 challenging the judgment of the Tribunal dated 04.01.2017 raising multiple issues including of the correctness of the Tribunal's remand, directions for examination of the Transfer Pricing on the present issue. Second development is that the Assessing Officer has already passed consequential order pursuant to the Tribunal's remand order dated 04.01.2017. A copy of the order dated 29.12.2018 is placed on record. Upon perusal of this order, we may notice that the Assessing Officer has accepted the assessee's contention on allowability of the interest expenditure of Rs.73.87 lakhs and deleted the addition previously made.

7. We have heard learned Counsel for the parties at some length. Having heard learned Counsel and having perused documents on record, the first thing that emerges is that on account of the order dated 29.12.2018, passed by the Assessing Officer giving effect to the Tribunal's remand directions, the entire issue has become one of academic. In the present case, therefore, we are not inclined to examine the correctness of the Tribunal refusing to exercise its

jurisdictional powers. However, we have serious doubt whether the Tribunal should have at the very outset given a direction to invoke the Transfer Pricing mechanism while in the appeal filed by the assessee on the issue at hand, the sole question was whether the dis-allowance of interest expenditure claimed by the assessee under Section 36(1)(iii) of the Act was correctly made. Under the circumstances, while disposing of this petition we observe that none of the pending proceedings of the petitioner assessee, be at any stage of assessment, first appellate or second appellate stage, would be influenced by the observations and directions of the Tribunal in this respect, in the context of the issue similar to the present one. We make it clear that nothing stated in this order would prevent the concerned authority from deciding the issue in accordance with law.

8. Petition is disposed of accordingly.

(M.S. SANKLECHA, J.)

(AKIL KURESHI, J.)