IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 12 OF 2019

SALGAOCAR MINING INDUSTRIES PVT. LTD., THR. ITS DIRECTOR, SUBRAMANY ... Appellant

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1, MARGAO ... Respondent

Mr. S. R. Rivankar with Mr. Rama Rivonkar, Advocates for the Appellant.
Ms. Susan Linhares, Standing Counsel for the Respondent.

Coram:- DAMA SESHADRI NAIDU & NUTAN D. SARDESSAI, JJ.
Date:- 13th February 2020

Oral Order:

On 15th October 2010, the appellant, carrying on its mining business, filed its return of income for the assessment year 2010-11, showing Rs.46,61,28,327/- as income. It also paid the tax of Rs.16.46 crores. Later, the Assessment Officer (A.O) took up the matter and issued a notice under section 143(2) and (4) of the Income Tax Act ("the IT Act"). Through that notice, the A.O called for certain records from the appellant. Th appellant, however, did not respond. Later, there was a change in the jurisdiction. The succeeding A.O issued two more notices under section 124 of the IT Act, the final notice being on 11th March 2013. Through that notice, the A.O fixed 19th March 2013 as the date of hearing; the appellant, nevertheless, contends that its agent appeared before the A.O on the next date with written submissions but was informed that the order was passed on the previous day itself.

2. Aggrieved, the appellant filed an appeal before the Commissioner (Appeals). On merits, the appellate authority has appreciated the rival contentions and secured a remand report from the AO. Then, based on the remand report submitted by the A.O, the Commissioner (Appeals) has maintained the assessment under section 14A but scaled down the expenditure under other heads. Aggrieved, this time, the Department approached the Income Tax Appellate Tribunal.

3. Eventually, on 4th February 2019, the Tribunal has found that the appellate authority has acted in haste and allowed the deduction without any material. The Tribunal has specifically recorded that the appellant has not produced all the records, yet based on the record extracts produced by it, the appellate authority has allowed the deductions. Thus, not satisfied with the approach adopted by the appellate authority, the Tribunal has remanded the matter to the primary authority for reconsideration. Now, the appellant has assailed the Tribunal's order, dated 4th February 2019.

4. The learned Senior Counsel for the appellant contends that the appellant did not receive the first notice. It has, according to him, received only the notices issued by the A.O after the change of jurisdiction. About the lack of opportunity for the appellant to defend itself before the AO., the learned Senior Counsel points out that the very next day to the date of hearing fixed by AO, the appellant's representative went with all the records

and written submissions. Yet the appellant was given no opportunity. Instead, he was told that the previous day—that is, the actual date of hearing—the orders were passed.

5. At any rate, the learned Senior Counsel contends that once the appellant has taken the matter before the appellate authority, that authority was satisfied with the arguments advanced by the appellant and remanded the matter to the A.O to look into certain aspects. Later, based on the remand report, the appellate authority has allowed certain deductions, though that authority has not touched the appellant's substantial claim under section 14A of the Act. According to the learned Senior Counsel, the Tribunal has erroneously observed that the appellant has not produced the entire record before the appellate authority.

6. To a specific query whether the appellant would be prejudiced if the matter had to be heard afresh by the A.O, as indicated by the Tribunal, the learned Senior Counsel submitted that it amounted to sheer harassment. He has further stressed that the appellant must again go through the remedial hierarchies should the AO's order be negative. So the learned Senior Counsel has urged this Court to set aside the Tribunal's order and, thus, restore the appellate authority's order.

7. In the alternative, the learned Senior Counsel has pleaded that if at all the Court is desirous of sending back the matter, it may remand the matter to the Tribunal, which can re-appreciate the facts as well as law.

8. On the other hand, the learned Standing Counsel for the Department has taken me through the impugned order and contended that the Tribunal has only desired to ensure that the adjudicating authorities have gone through all the material evidence before ruling on the appellant's tax liability. It is not for the appellant to pick a particular authority and insist that only that authority should adjudicate the dispute. In fact, having the matter relegated to the primary authority serves the appellant's purpose better. To elaborate, the learned Standing Counsel has submitted that now the appellant has every opportunity to place all the material before the AO and vindicate its stand. Besides, the appellant gets an additional appellate remedy, too. Thus, she maintains that the remand is justified, and the appellant has not been prejudiced.

9. Heard Shri Rivankar, the learned Senior Counsel for the appellant, and Ms. Linhares, the learned Standing Counsel for the respondent/Department.

10. Indeed, the initial assessment proceedings before the AO were ex parte, for the appellant had not chosen to respondent to the statutory notices. Then, the appellant has approached the Commissioner (Appeals), who secured a remand report from the Assessing Officer. Finally, the appellate authority has confirmed the AO's disallowance under Section 14A of the IT Act but deleted the additions.

11. On the Department's appeal, the Income Tax Appellate Tribunal has observed that the appellate authority has "displayed haste in deleting the

additions without the assessee even agreeing to produce the complete books of account and the supporting evidence." Then, the Tribunal has concluded that it will the interest of justice if the "issue is remitted to the file of the AO." The appellant was, thus, given one more opportunity to agitate the issue before the AO and justify its contentions.

12. We, therefore, reckon that the impugned order of the Tribunal has caused no prejudice to the appellant; nor has it suffered from any legal infirmity for us to interfere.

Under these circumstances, we see no substantial question of law arising for our consideration. Therefore, we decline to interfere with the impugned order. As a result, the Tax Appeal fails, and the impugned order remains intact.

NUTAN D. SARDESSAI, J. **DAMA SESHADRI NAIDU, J.**

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