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ITAT/238/2017
IA No.GA/1/2017 (Old No.GA/2214/2017)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PHILIPS INDIA LIMITED

-Versus-

PRINCIPAL COMMISSIONER OF INCOME
TAX, KOLKATA

Appearance:

Mr. J. P. Khaitan, Sr. Adv.

Mr. Ananda Sen, Adv.

Mr. A.K. Dey, Adv.

...for the appellant.

Mr. P. K. Bhowmick, Adv.

...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 17th November, 2021.

The Court : This appeal of assessee filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 22nd February, 2017 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (the 'Tribunal') in miscellaneous application in MA No.139/Kol/2016 arising out of ITA No.1545/Kol/2009 for the assessment year 2004-05.

The assessee has raised the following substantial questions of law for consideration :

"I. Whether on the facts and in the circumstances of the case, the order of the Tribunal is erroneous having been perverse for not allowing the claim of the petitioner of lease rent paid as revenue expenditure under section 37(1) of the Act on the pretext that the issue was debatable and that the case was not covered by the decision of the Supreme Court in Re: ICDS Ltd. vs. CIT, when on the contrary all evidences and materials were present on record?

II. Whether on the facts and in the circumstances of the case, the order passed by the tribunal is erroneous in so far as it is perverse of having completely ignored to abide by the well settled principle of law that no party appearing before the Tribunal should suffer on account of any mistake committed by the Tribunal?

III. Whether on the facts and in the circumstances of the case, the order passed by the Tribunal is erroneous as well as perverse in observing that no express power of revenue was conferred on the Tribunal thereby ignoring the well settled principle of law that when prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right and such atonement to the wronged party by the Tribunal has nothing to do with the concept of inherent power to review?"

We have heard Mr. J.P. Khaitan, learned senior counsel for the appellant/assessee and Mr. Bhowmick, learned standing counsel for the respondent/revenue.

The assessee filed its Return of income tax for the assessment year under consideration (2004-05) and in the return amongst other claims the assessee made claim for allowing deduction of lease rental paid on cars taken on financial lease as a revenue expenditure. The return was selected for scrutiny and notice under Section 143(2) was issued and subsequently the respondent issued notice under Section 142(1) of the Act along with a questionnaire seeking for certain clarifications. The assessee submitted the requisite clarifications and sought to sustain the claim for deduction as being revenue expenditure under Section 37 of the Act. The assessing officer did not agree with the assessee and completed the assessment under Section 143(3) of the Act by order dated 29th December, 2006.

Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) (CIT(A)). The CIT(A) by an order dated 30th June, 2009 allowed the appeal and held that the assessee is entitled for deduction. Aggrieved by the same, the revenue preferred appeal before the tribunal. In the revenue's appeal, the assessee made a specific submission by placing reliance on the decision of the Supreme Court in *ICDS Ltd. vs. CIT* reported in 350 ITR 527(SC). The assessee submitted that the facts of the case in ICDS were identical to that of the assessee's case and as the assessee had paid the lease rental towards cars taken on financial lease, they were entitled to claim

deduction. The submissions made before the tribunal were in a tabulated form where it was also specifically pointed out as to how the facts in the case of ICDS were identical to that of the assessee's case. The tribunal by an order dated 11th May, 2016 rejected the case of the assessee and allowed the revenue's appeal following the earlier decision in the assessee's own case for the assessment year 2003-04. In fact, the submission of the assessee before the tribunal was that there was a change of circumstances in light of the decision of the Hon'ble Supreme Court in ICDS which requires to be considered and the assessee was entitled to relief.

On a perusal of the order passed by the tribunal dated 11th May, 2016, more particularly from paragraphs 23, 24 and 25, we find that the tribunal has not referred to the decision but proceeded solely based upon the order in the assessee's own case for the assessment year 2003-04. Subsequently, the assessee filed a miscellaneous petition under Section 254 of the Act stating that there was a mistake apparent from the records and the same requires to be rectified. It was specifically pointed out that the assessee had submitted a summary of its arguments in course of hearing on the grounds raised in the revenue's appeal and the arguments were regarding the issue of allowability of payments towards the lease rental and stated that they specifically placed reliance on the decision of the Hon'ble Supreme Court in the case

of ICDS. The assessee placed reliance on the decision of the Hon'ble Supreme court in Assistant Commissioner of Income Tax vs. Saurashtra Kutch Stock Exchange Ltd. 305 ITR 227 for the proposition that non-consideration of a decision of the jurisdictional high court or the Hon'ble Supreme Court is a mistake apparent from records. Those were the contentions raised by the assessee before the tribunal. The tribunal was not inclined to accept the same and dismissed the miscellaneous application. Thus, aggrieved by both the orders passed in the main appeal by the tribunal dated 11th May, 2016 and the order passed in the miscellaneous application dated 22nd February, 2017 which stood merged with the main order, the assessee is before us.

The tribunal while rejecting the miscellaneous application, has made an observation in paragraph 5.3 of its order dated 22nd February, 2017 that the issue which is raised by the assessee by placing reliance on the decision of the Hon'ble Supreme Court in ICDS is a debatable issue. We do not agree with the findings arrived at by the tribunal because there was no adjudication by the tribunal at the first instance when it allowed the revenue's appeal by an order dated 11th May, 2016. In fact, we find that the said decision was not even referred to though relied upon by the assessee. Therefore, only after the issue was considered on merits, the tribunal can take a stand that the issue is debatable and for doing so the tribunal should record the

reasons as to what are the other decisions on the very same point which may not support the case of the assessee. Therefore, we find that the order rejecting the miscellaneous application filed by the tribunal is incorrect and calls for interference.

Going back to the correctness of the order passed by the tribunal dated 11th May, 2016 by which the revenue's appeal was allowed, as pointed out earlier, the tribunal has not examined the facts of the case qua the applicability of the decision of the Hon'ble Supreme Court in ICDS (supra). This was required to be done by the tribunal because the said decision of the Hon'ble Supreme Court came to be delivered after the order was passed by the tribunal in assessee's own case for the assessment year 2003-04. Therefore, the tribunal committed an error in observing that they need to take a consistent approach in the matter. The rule of consistency requires to be interpreted on facts bearing in mind the legal principle that each assessment year is an individual unit. Therefore, we are of the view that the matter requires to be remanded to the tribunal to decide the issue relating to the claim on account of allowability of deduction on the amount of lease rental paid by the assessee to the lessor.

For the above reasons, the appeal is allowed and the order passed by the tribunal dated 22nd February, 2017 in MA No.139/Kol/2016 is set aside and consequently, the order passed by the tribunal dated 11th May, 2016 is set aside in so far as the

subject issue is concerned and the matter stands remanded to the tribunal to decide the claim of allowability of deduction.

The assessee is at liberty to place all facts and legal submission before the tribunal. After hearing the assessee, the tribunal shall take a fresh decision on merits and in accordance with law. The substantial questions of law are left open.

The connected application stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)