

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA
TAX APPEAL NO. 3 OF 2016

M/s. Goa Carbon Ltd, Dempo House, Campal,
Panaji, Goa, Pin: 403001 PAN: AAACG6842K ...Appellant

Versus

1. Joint Commissioner of Income Tax, Range-1,
having office at 'Aayakar Bhavan', Patto-Plaza,
Panaji-Goa.
2. Union of India, Through the Secretary
(Revenue), Ministry of Finance, North Block,
New Delhi. ...Respondents

**Mr. Mihir Naniwadekar & Ms. Vinita Palyekar, Advocates for
the Appellant.**

**Ms. Susan Linhares, Standing Counsel for the Respondent nos.
1 and 2.**

**CORAM: M. S. SONAK &
M. S. JAWALKAR, JJ**
DATED: 19th July 2021

ORAL JUDGMENT (Per M. S. Sonak, J.)

1. Heard Mr. Mihir Naniwadekar, learned Counsel for the Appellant, and Ms. Susan Linhares learned Standing Counsel for the Respondent nos. 1 and 2.

2. This appeal was admitted on 7th March 2016 on the following substantial question of law :

“Whether on the facts and in circumstances of the case and in law, the ITAT was justified in sustaining

addition of Rs.3,02,29,477/-, without appreciating that the valuation of closing stock has to be done on the basis of cost or market price, whichever is lower and for determining the market price for this purpose, the relevant price is the price as on 31st March and not the average price for the entire year?

3. This appeal pertains to the assessment for the Assessment Year 2009-2010. The Assessing Officer vide his order dated 29.11.2011, disallowed the loss of ₹3,02,29,477/- claimed by the Appellant-Assessee in the stock valuation and added the same to the total income of the Assessee.

4. The assessment order dated 29.11.2011 was upheld by the Commissioner of Income Tax (CIT)(Appeals) on 11.05.2015. The Assessee's appeal to the Income Tax Appellate Tribunal (ITAT) was dismissed on 14.09.2015. Hence, the present appeal on the aforesaid substantial question of law.

5. Mr. Naniwadekar, the learned Counsel for the Appellant, submits that in the present case, the Assessing Officer took into account the average market rate for the period from 01.04.2008 to 31.03.2009 instead of taking into account the market rate for March 2009 which was only ₹ 18,107/-. He submits that the details furnished by the Appellant were based on the books of account maintained by the Appellant and such accounts were not rejected but accepted by the Assessing Officer. He submits that at no stage was the Assessee required to produce any evidence to support the entries/figures reflected in the book of accounts. He submits that the Assessing Officer, CIT (Appeals), and ITAT have referred to the average market price for the entire year instead of

taking the market price only for March 2009 and this constitutes an error apparent on the face of the record. He submits that the findings recorded by all the three authorities are such as ought not to be arrived at by any reasonable authority instructed in law and on facts. He, therefore, submits that the substantial question of law as framed is required to be answered in favor of the Appellant-Assessee.

6. Ms. Linhares, learned Standing Counsel, defends the impugned orders based on the reasoning reflected therein. She submits that pure findings of facts have been recorded by the three authorities and this is not a case of perversity in the record of such finding of facts. She submits that the Assessee wishes this Court to re-assess this material on record, which exercise this Court while exercising second appellate jurisdiction should normally decline. She submits that no evidence was produced by the Assessee to justify the significant variation in the cost price and the alleged market price. For all these reasons, she submits that this appeal is liable to be dismissed.

7. The rival contentions now fall for our determination.

8. At the outset, we must note that from the perusal of the orders made by the Assessing Officer, CIT (Appeals), and ITAT, it does appear that the question which is now sought to be raised by the Appellant-Assessee was not clearly raised. At least, such a question in the form in which it is sought to be projected was not raised before the Assessing Officer or the CIT (Appeals). There is only a sentence to be found in the order made by the ITAT about a submission that the market price of the Assessee's products

during the end of the relevant assessment year i.e. March 2009, was ₹ 18,107/- whereas the average market price for the whole year was ₹ 24,721/-. However, except for this submission, such an issue in the form in which it is projected in this appeal does not appear to have been raised before the Assessing Officer or CIT (Appeals).

9. If, the memo of appeal before ITAT is perused, then, it is evident that the Appellant-Assessee had merely contended that the Appellant has valued the closing stock “*consistently in line with the Generally Accepted Accounting Principles*”. Based on this single line, it was urged that the CIT (Appeals) erred in holding that the valuation of closing stock as computed by the Assessing Officer was more than ₹ 3,02,29,477/-.

10. The aforesaid means that neither was the specific ground now sought to be projected in this Appeal ever raised in the memo of appeal before the ITAT nor was such contention seriously advanced and pressed before the ITAT. Based on the single statement in the ITAT order dated 14.09.2015, which is again not backed by any ground in the memo of appeal, we cannot accept that the substantial question of law now raised, was effectively raised and adjudicated before the earlier authorities. In such circumstances, the substantial question of law though framed, cannot be said as arising in this Second Appeal.

11. Be that as it may, the Assessing Officer, the CIT (Appeals), and ITAT have recorded pure findings of fact. Such findings of fact cannot be interfered with in a Second Appeal unless a case of perversity is made out. At this stage, it is not for this Court to re-

assess or re-appreciate the material on record, only to find whether some different view is possible. All the authorities, based on the material before them, or the lack of proper evidence before them, have held that the disparity between the cost price and the market price remains unexplained by the Appellant-Assessee. The ITAT has also noted that the Appellant-Assessee failed to explain the basis for valuation of closing stock being lesser than even the average cost or the average market price. ITAT also noted that the Appellant-Assessee failed to produce any cogent evidence to substantiate its claim even before the ITAT itself despite the grant of opportunity.

12. According to us, the findings recorded by the three authorities or the view taken by the three authorities cannot be styled as some perverse view or a view which no reasonable person, well instructed in the law, could have ever arrived at. Accordingly, there is no case made out to interfere with such concurrent findings recorded by all the authorities, in the exercise of the limited jurisdiction vested in us in this Second Appeal. Apart from producing an unsigned chart and raising vague pleas, no material was placed on record by the assessee to explain the variation in the cost price and the market price during the relevant assessment year. No case is therefore made out to interfere with the findings concurrently recorded by the three authorities.

13. Ms. Linhares learned Standing Counsel, relied on *Commissioner of Income-tax vs. British Paints India Ltd.*¹ to submit that in the absence of any cogent evidence produced on

¹ (1991) 54 Taxman 499 (SC)

record by the Assessee, the Assessing Officer was justified in determining the market price, having regard to the market rate in the course of the assessment year.

14. In the present case, the Assessee, apart from submitting an unsigned chart, allegedly based on the books of account maintained by the Assessee, had failed to produce on record any material in support of the substantial variation between the cost price and the market price. In such a situation, there was nothing wrong with the approach of the Assessing Officer and the determination ultimately made by the Assessing Officer.

15. In ***British Paints India*** (supra), the Hon'ble Supreme Court has held that :

“Section 145 of the IT Act confers sufficient power upon the officer – nay, it imposes a duty upon him – to make such computation in such manner as he determines for deducing the correct profits and gains. This means that where accounts are prepared without disclosing the real cost of the stock-in-trade, albeit on sound expert advice in the interest of efficient administration of the company, it is the duty of the ITO to determine the taxable income by making such computation as he thinks fit. Any system of accounting which excludes, for the valuation of the stock-in-trade, all costs other than the cost of raw material for the goods in process and finished products, is likely to result in a distorted picture of the true state of the business

for the purpose of computing the chargeable income. Such a system may produce a comparatively lower valuation of the opening stock and the closing stock, thus, showing a comparatively low difference between the two. In a period of rising turnover and rising prices, the system adopted by the assessee, as found by the Tribunal, is apt to diminish the assessment of the taxable profit of a year. The profit of one year is likely to be shifted to another year which is an incorrect method of computing profits and gains for the purpose of assessment. Each year being a self-contained unit, and the taxes of a particular year being payable with reference to the income of that year, as computed in terms of the Act, the method adopted by the assessee has been found to be such that income could not properly be deduced therefrom. It was, therefore, not only the right but the duty of the Assessing Officer to act in exercise of his statutory power, as he has done in the instant case, for determining what, in his opinion, was the correct taxable income. The Tribunal's order, affirming that of the Assessing Officer, was based on findings of fact made on cogent evidence and in accordance with correct principles. The High Court was clearly wrong in interfering with those findings. Accordingly, the judgment of the High Court was to be set aside.”

16. According to us, the aforesaid observations in *British Paints India* (supra), assist the revenue in this matter.

17. For all the aforesaid reasons, we dismiss this Appeal by holding that substantial question of law as framed, does not arise in the matter or any case, based on the material on record, is required to be answered against the Appellant-Assessee.

18. The Appeal is accordingly dismissed. There shall be no order as to costs.

M. S. JAWALKAR, J.

M. S. SONAK, J.