S.S.Kilaje

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

INCOME TAX APPEAL NO. 1544 OF 2012

Commissioner of Income Tax - 1 .. Appellant

Versus

Chemspec Chemicals P. Ltd. .. Respondent

....

- Mr. Suresh Kumar for the Appellant.
- Mr. Atul K. Jasani for the Respondent.

....

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : FEBRUARY 03, 2021.

P.C.:

Heard Mr. Suresh Kumar, learned standing counsel, Revenue for the appellant and Mr. Atul Jasani, learned counsel for the respondent / assessee.

2. This appeal under section 260A of the Income Tax Act, 1961 has been preferred by the revenue as the appellant against the order dated 29.03.2012 passed by the Income Tax Appellate Tribunal, "C" Bench, Mumbai in IT(SS)A Nos. 503/Mum/2004 and 476/Mum/2004 for the block period 01.04.1990 to 22.01.2001.

3. The appeal was admitted by this Court on 12.12.2014 on the substantial questions of law framed in the said order.

4. It is stated that during the pendency of the appeal Parliament has enacted the Direct Tax Vivad Se Vishwas Act, 2020 providing for a scheme for resolution of tax disputes. In terms of the scheme, respondent/assessee has made a declaration under section 3 thereof before the designated authority on 03.11.2020 for four assessment years i.e. 1988-89, 1999-00, 2000-01 and 2001-02 covered in the block period under consideration. Designated authority has issued certificates under section 5(1) on 23.12.2020 determining amounts payable by the appellant for the four assessment years at Rs.11,87,752.00 : Rs.54,494.00 : Rs.54,494.00 : and Rs.71,04,153.00 respectively with instructions to pay the said amount by 31.03.2021.

5. Respondent/assessee has stated that the amounts determined by the designated authority as above have been paid on 23.12.2020. However, for passing of final order under section 5(2), appeal is required to be withdrawn. Hence, the prayer for withdrawal of the appeal.

6. When the case was heard on 19.01.2021, we had passed a detailed order in the following terms :-

> *"11. Though the Act is silent regarding withdrawal of appeal by the income tax department when the assessee as the declarant has filed declaration before the designated authority and pays the tax amount determined by the designated authority, from the answers given to question Nos.21 and 48 we find that even when the income tax department is in appeal before the High Court the assessee can ask for settlement under the Act and if he pays the*

determined tax amount, the income tax department would be under an obligation to withdraw the appeal. There is good reason for taking such a view because having allowed an assessee to opt for settlement under the Act and having determined the tax amount required to be paid by the assessee under the Act and having accepted the payment made by the assessee, it would be wholly unjust and unfair to allow the income tax department to continue proceeding with the appeal pending in the High Court notwithstanding settlement of dues of the assessee under the scheme.

12. Reverting back to the facts of the present case, we find that income tax department has acknowledged receipt of the determined amounts paid by the appellant. If that be so, we do not find any good reason for the revenue to continue with the appeal, particularly in the light of section 5(3) which clarifies that upon passing of order under sub-section (1) of section 5, determining the amount payable under the Act, it shall be conclusive as to the matters stated therein and no matters covered by such order shall be reopened in any other proceeding under the Income Tax Act, 1961 or under any other law for the time in force."

7. Today when the matter is called upon, Mr. Suresh Kumar submits on instruction that he would like to withdraw the appeal.

8. Accordingly the appeal is disposed of as withdrawn.

9. Refund as per Rules.

[MILIND N. JADHAV, J.] **[UJJAL BHUYAN, J.]**

Ravindra M. Amberkar

Digitally signed by Ravindra M. Amberkar
Date: 2021.02.04 18:12:23 +0530