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

INCOME TAX APPEAL NO.80 OF 2018

Pr. Commissioner of Income Tax,
Central-2, Mumbai ...Appellant
vs.
Layer Exports Private Limited ...Respondent

Mr. Sham Walve, for the Appellant
Mr. P.C. Tripathi a/w. Mr. Sashi Tulsiyan, for the Respondent.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.

DATE : FEBRUARY 23, 2022

P.C.:

1. The Revenue has preferred this Appeal being aggrieved by the judgment and order of the Income Tax Appellate Tribunal "A" Bench, Mumbai in Income Tax Appeal Nos. 3019, 3020, 3021, 2985 and 2986/Mum/2011 (A.Ys.:2004-05, 2005-06, 2008-09, 2006-07 and 2007-08) and Income Tax Appeal Nos. 1097 and 5613/Mum/2013 (A.Y. 2009-10 and 2010-11).

2. The Revenue has proposed the following substantial question of law.

> "Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was right in deleting the addition made by the AO of Rs. 7,86,65,205/- without appreciating the fact that the

> commercial expediency was not proved with respect to compensation and interest paid to the Videocon Group by the assessee, as per the provisions of sec.37(1) of the I.T.Act, 1961 ?

3. The Respondent/Assessee is engaged in the business of construction of buildings. In the assessment proceeding under section 153A of the Income Tax Act, 1961 (the Act) consequent to a search under section 132 of the Act, it was found that the assessee had paid a sum of Rs. 6,50,00,00,000/- towards compensation and Rs. 1,36,65,205/- towards the interest to Videocon Group persuant to the consent terms executed in the suit before this Court, dated 8th December, 2005. The Assessing Officer disallowed the expenses under section 37(1) of the Act on the ground that those expenses were not made wholly and exclusively for the purpose of business and had nothing to do with commercial expediency. In an Appeal preferred by the assessee, the Commissioner(A) directed the Assessing Officer to allow the said expenses under section 37(1) of the Act, but towards work in progress account as the assessee was following the project completion method of accounting. By the impugned order the Tribunal allowed the Appeal of the assessee and dismissed the Appeal preferred by the Revenue. It was, inter alia, observed that there was no justification to frame assessment under section 153A of the Act as no new material had surfaced as regards

the compensation and interest expenses. Being further aggrieved the Revenue is in appeal.

4. We have heard Mr. Walve, the learned counsel for the Appellant.

5. From the perusal of the observations in paragraph Nos. 54 to 58 of the impugned order it becomes clear that the Tribunal has properly appreciated the issue as to the allowability of the expenses incurred towards the compensation and interest pursuant to the settlement of the dispute between the assessee and Videocon Group. The Tribunal did not find any infirmity in the finding of the Commissioner (A) that the compensation and interest was paid for the purpose of resolving a genuine dispute and the said decision was driven by commercial expediency. In the backdrop of concurrent findings of fact as regards the payment of compensation and interest towards settlement of a genuine dispute, we do not find any justifiable reason to entertain the Appeal. In addition, the view of the Tribunal that there was no new material to frame assessment under section 153A of the Act as regards the allowability of expenses towards compensation and interest appears will merited.

6. For the foregoing reasons, in our view, in the facts and circumstance of the case, the proposed question of law (extracted above), does not warrant consideration. Resultantly, the Appeal does not deserve to be admitted.

7. The Appeal thus stand dismissed.

(N. J. JAMADAR, J.) **(K. R. SHRIRAM, J.)**