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

INCOME TAX APPEAL NO.876 OF 2018

The Pr. Commissioner of Income Tax-4 .. Appellant
v/s.
Tetra Pak India Pvt. Ltd. .. Respondent

…

Mr. Suresh Kumar for the Appellant.

Ms. Fereshte Sethna a/w Mr. Mrunal Parekh i/b. DMD Advocates for the Respondent.

…

CORAM : K. R. SHRIRAM &
KAMAL KHATA, JJ.
DATED : 27TH SEPTEMBER 2023.

P.C. :

1. Assessee is engaged in the business of manufacturing and sale of packaging machines and systems. Assessee also leases packaging machinery and spare parts. During the period relevant to the Assessment Year under Appeal, viz., A.Y 2002-03, Assessee entered into various international transactions with its Associated Enterprises (**"AEs"**).

2. The case was referred to the Transfer Pricing Officer (**"TPO"**) who

passed an order under Section 92CA(3) of the Income Tax Act (“**the Act**”) proposing an upward adjustment of Rs.9,44,58,219/- comprising of TP adjustment on account of international transactions made on account of import of paper, aluminum foil, K Film, purchase return of imported paper, etc.

3. The Assessing Officer (“**AO**”) passed an Assessment Order under Section 143(3) after receipt of TPO’s order. In addition to the transfer and pricing adjustment, the Assessing Officer made other additions. Aggrieved by the Assessment Order passed by the AO, the Assessee filed an Appeal before the Commissioner of Income Tax (Appeals) [“**CIT (A**)]. The Appeal was allowed by the CIT(A) by an order dated 25th May 2014. Aggrieved by the said, the Revenue preferred an Appeal before the Income Tax Appellate Tribunal (“**ITAT**”) which dismissed the Appeal of Revenue. The Assessee had also preferred an Appeal against certain proportions of the order of CIT(A). The Assessee’s Appeal also came to be dismissed.

4. Following two substantial questions of law are proposed:

> *“A. Whether on the facts and in the circumstances of the case and in law, the Hon’ble*

ITAT was justified in including Liability written back and Doubtful debt written back as part of the operating income without even adjudicating the ground of the department that the assessee company was not justified in its stand as the assessee company itself has treated them as non-operating in later Ays i.e A.Y 2010-11 and A. Y 2011-12?

B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred n including Liability written back and Doubtful debt written back as part of the operating income without appreciating the fact that both these items represents provisions made in earlier years which have been reversed in AY 2002-03 and do not constitute income from the operations of the assessee for the relevant financial year?"

5. The Assessee in its return of income declared a loss of Rs.8,79,49,514/-. The operating profits of the Assessee was 7.5% and the transfer pricing study of the Assessee supported that the same was within Arm's length. The TPO made certain adjustments to the operating profit by excluding certain items of income from the scope of operating profit of the Assessee. The TPO held that out of the operating profits of the Assessee as declared in the books of accounts, six items should not constitute

the operating profits and hence were excluded. These six items are:

Particulars	Amount (Rs.)
Interest on FD	95,63,024/-
Interest on IT refund	4,05,651/-
Liability written back	6,15,59,011/-
Profit on sale of asset	1,43,28,497/-
Doubtful debts written back	1,48,74,096/-
Miscellaneous income	1,15,12,640/-
Total	**11,22,43,919/-**

6. Thus, the amount of Rs.11,22,43,919/- was excluded from the scope of operating profits. The TPO/AO therefore made an addition of Rs.9,44,58,212/-.

7. The CIT (A) held that the receipts on account of interest of Fixed Deposit, interest on income tax refund and profit on sale of asset (non-business income) do not constitute an operating income. The CIT(A) held that a part of the miscellaneous income (other than design income and services income) also would not constitute an operating income. Therefore, on these items the CIT(A) confirmed the opinion of the TPO and against the Assessee. The CIT(A), however, confirmed the inclusion of liability written

back amounting to Rs.6,15,59,011/-, doubtful debts written back amounting to Rs.1,48,74,096/- and miscellaneous income (design income and services income) for the purpose of computing the operating profits of the Assessee and accepted the Assessee's averments on these items. Therefore, to the extent the CIT (A) held against the Assessee on interest on Fixed Deposit income tax, refund and profit on sale of assets etc., the Assessee had preferred an Appeal and to the extent CIT(A) accepted the submissions of the Assessee, the Revenue had preferred an Appeal.

8. As regard the credit to profit and loss account on account of liabilities written back amounting to Rs.6,15,59,011/-, the details of the liabilities written back were made available to CIT(A) as well as ITAT. Both, on facts, and having considered those details, have come to conclusion accepting the Assessee's contention that those liabilities belong to earlier years and are directly relatable to the regular business operations of the Assessee and since these liabilities were no longer payable to business creditors should be allowed to be written back in the Assessment Year under consideration and the same was rightly offered to tax as business income under Section 41(1) of the Act. Therefore, on facts it was accepted that these liabilities written back were arising out of

normal business operations and hence form part of operating income of the Assessee.

9. As regards the writing back of doubtful debts amounting to Rs.1,48,74,096/-, the CIT(A) came to a factual finding which has also been accepted by the ITAT that those doubtful debts were inextricably linked with the business operations and hence should be considered as operating income.

10. Therefore, there are factual findings to that effect and both CIT(A) and ITAT have accepted the details submitted by the Assessee.

11. In the circumstances, in our view no substantial question of law arises.

12. Appeal dismissed.

(KAMAL KHATA, J.) **(K.R. SHRIRAM, J.)**