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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITA/12/2018
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-4, KOLKATA
VS
M/S. AKZO NOBLE INDIA LIMITED

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 30th April, 2024

Appearance :
Sri Vishal Kalra, Adv.(VC)
Sri Avra Mazumder, Adv.
Smt. Alisha Das, Adv.
Smt. Elina Dey, Adv.
Sri Samrat Das, Adv.
..for the respondent.

1. Case called out. None appears for the appellant to press the appeal. Sri Vishal Kalra, learned counsel for the respondent/assessee is present through video conferencing, who is assisted by Sri Avra Mazumder, learned counsel.

2. This appeal was admitted by order dated 12.2.2018 on the following substantial questions of law :

"*(i) Whether provision made in the Assessee's book for payment on account of voluntary retirement of his employees without incurring expenditure for that particular previous year would be eligible for deduction on or not, the assessment year involved being 1998-99?*

(ii) Whether the Assessee's sale of certain undertaking in respect of financial year 1997-98

(corresponding to assessment year 1998-99) would attract short term capital gains as envisaged section 50 of the Income Tax Act, 1961?"

3. Learned counsel for the respondent/assessee has produced before us a copy of the judgment and order dated 7.12.2021 in ITAT/151/2017 (Commissioner of Income Tax-4, Kolkata Vs. M/s. Akzo Noble India Limited) relating to assessment year 1996-97, and submits that both the questions are squarely covered and, therefore, the appeal of the revenue deserves to be dismissed.

4. We have perused the aforesaid judgment and order dated 7.12.2021 passed by this Court in assessee's own case relating to assessment year 1996-97. The present appeal relates to assessment year 1998-99. The aforesaid judgment and order dated 7.12.2021 passed in ITAT/151/2017 is reproduced below :

*"**T.S.SIVAGNANAM,J.:** This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 (the Act in brevity) is directed against the composite order dated 27th November, 2015 passed by the Income Tax Appellate Tribunal, "B" Bench Kolkata in ITA Nos. 850 and 1021/Kol/2007 and ITA Nos. 2048 and 2355/Kol/2005 for the assessment year 1996-97. The Revenue has raised the following substantial questions of law for consideration :*

1. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in allowing the deduction of liability on account of *the provision of leave encashment which has not fallen due within the financial year 1995-1996 corresponding to Assessment Year 1996-1997?*

2. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in allowing the deduction of Voluntary Retirement Scheme (VRS) payments which is payable in future years and not crystallized expenditure of this year is in the nature of provision to meet the future liability?

3. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in holding the consideration received on sale proceeds of assessee's chemical undertaking is not liable to tax as short term capital gain under Section 50 of the Income Tax Act or as long term capital gain?

We have heard Mr. Jana, learned standing counsel appearing for the Revenue and Mr. Vishal Karla, learned counsel assisted by Mr. Mazumder for the respondent/assessee.

So far as substantial questions of law Nos. 1 and 2 are concerned, the Tribunal rightly took note of the decision of the Hon'ble Supreme Court in Metal Box Company of India Ltd. Vs. Workmen (1969) 73 ITR 53 SC which was followed by the Hon'ble Supreme Court in Bharat Earth Movers Vs. CIT [2000] 245 ITR 428 SC. Therefore, we find there is no error in the order passed by the Tribunal. Hence, question Nos. 1 and 2 are decided against the Revenue. In so far as substantial question of law No. 3 is concerned, in assessee's own case in ITAT 31 of 2018 dated 24th November, 2021, we have dismissed the Revenue's appeal and decided the question in favour of the respondent/assessee. Thus, following the said decision, the substantial question No. 3 is also answered *against the Revenue. In the result, the appeal filed by the Revenue is dismissed and all the three substantial questions of law are answered against the Revenue.*

Consequently, stay application stands dismissed."

5. We find that the substantial questions of law, as framed in the present appeal, are squarely covered by the afore-quoted judgment and order passed by this Court in ITAT/151/2017. Respectfully following the aforesaid judgment and order dated 7.12.2021 in the case relating to present assessee, this appeal is also dismissed. Both the substantial questions of law are answered in favour of the assessee and against the revenue.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

Sd/