IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2024

CORAM:

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. No.12313 of 2021 & W.M.P. Nos.13094 and 13096 of 2021

Stahl India Pvt. Limited
represented by the Authorised Signatory
Saravanan Srinivasan
1A, Sargunar Salai
Nagalkeni, Chromepet
Chennai 600 044 Petitioner

v

1 The Additional / Joint / Deputy / Assistant Commissioner of Income Tax/Income Tax Officer
National e-Assessment Centre
Delhi

2 The Principal Chief Commissioner of Income Tax
National e-Assessment Centre
Income Tax Department
Delhi

3 The Assistant Commissioner of Income Tax
Corporate Circle 6(1)
Aaykar Bhawan
Nungambakkam
Chennai Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari calling for the records on the file of the first respondent in passing the impugned order No.ITBA/AST/S/143(3)/2021-22/1032684577(1) for the assessment year 2018-2019 under Section

143(3) read with Section 144B of the Act dated 26.04.2021 and quash the same as illegal, arbitrary, devoid of merits and passed in violation of the procedure mandated by the Act.

For petitioner	Mr. N. V. Balaji
For respondents	Mrs. S. Premalatha Junior Standing Counsel

ORDER

An assessment order dated 26.04.2021 passed by the first respondent is assailed in this writ petition.

2 The petitioner filed the return of income for assessment year 2018-2019. In relation thereto, notices under Section 142(1) of the Income Tax Act, 1961 (the I.T. Act) were issued to the petitioner. Being dissatisfied with the petitioner's responses, a show cause notice dated 05.04.2021 was issued. The petitioner replied thereto on 08.04.2021. The impugned assessment order was issued thereafter on 26.04.2021.

3 Learned counsel for the petitioner submits that the impugned order is vitiated for at least three reasons. Learned counsel first dealt with the characterisation of the expenditure of Rs.18,52,64,400/- as capital expenditure, instead of revenue expenditure. He points out that the

petitioner had set out extensive reasons along with supporting precedents to contend that the petitioner had not incurred capital expenditure and that such expenditure was incurred merely for priority in the supply of goods from BASF India. Learned counsel points out that, after noticing such submissions, contradictory findings were recorded. Learned counsel further points out that, on the one hand, it was recorded in paragraph 7 (internal page 4 of the order) that the expenditure is capital in nature and that 75% of the expenditure is being added to the income after allowing 25% depreciation. On the other hand, he points out that, in paragraph 15, it was recorded that the assessee's explanation on this issue is accepted.

4 He next dealt with the petitioner's claim for goodwill for a sum of Rs.171.50 crores. On this issue also, he submits that the petitioner had set out elaborate reasons for claiming the said sum as goodwill. In spite of noticing and extracting the petitioner's submissions on this issue, learned counsel submits that paragraph 10 of the impugned order does not deal with those submissions or record reasons for rejecting the same.

5 Moreover, learned counsel submits that Section 69 of the I.T. Act was invoked to make the addition. He points out that Section 69 of the

I.T. Act applies only if the income or article concerned was not entered in the books of account. Since the claim of Rs.171.50 crores towards goodwill was entered in the books of account of the petitioner, learned counsel submits that the said provision has no application at all.

6 The last contention of learned counsel for the petitioner was that a personal hearing by video conference was requested for by the petitioner and that such request was accepted. However, he submits that the admitted position is that a personal hearing by video conference was not granted to the petitioner due to technical reasons. Indeed, he submits that this is admitted in the counter affidavit of the respondents.

7 Mrs. Premalatha, learned Junior Standing Counsel for the respondents, made submissions in response. As regards the claim that a sum of Rs.18,52,64,400/- was incurred as revenue expenditure, she submits that the impugned order contains reasons for rejecting the claim and for treating it as capital expenditure. As regards the contradiction, she points out that it may be a typographical error.

8 With regard to the issue relating to goodwill, by referring to

paragraph 10 of the impugned order, learned Junior Standing Counsel submits that the claim was accepted to the extent that the goodwill claim was corroborated by the valuation report. As regards the balance, she submits that it was added to the income of the assessee.

9 Under Section 144B of the I.T. Act, a personal hearing by video conference is mandatory if requested for by the assessee. In this case, the documents on record indicate beyond doubt that a request was made by the petitioner. The respondents acceded to that request, but were unable to provide an effective personal hearing by video conference. The impugned order requires reconsideration solely on this ground.

10 As regards the disallowance of the claim towards revenue expenditure, the following findings were recorded:

> "7. On examining the documents the reply of the assessee is not acceptable and the entire amount of Rs.18,52,64,400/- is treated as capital expenditure instead of revenue expenditure and the same is disallowed on account of revenue expenditure claimed in P & L A/c. As the expenditure is in the capital nature, hence, the same is added in the capital assets and accordingly, depreciation @ 25% is also allowable as eligible deduction u/s 32 of the IT Act. Accordingly, an addition of Rs.14,82,11,520/- (18,52,64,400 – 3,70,52,880 being 25% of 18,52,64,400) is added to the

income of the assessee u/s 37 of the IT Act.

15 Regarding the claim of any other amount allowable as deduction to the tune of Rs.18,52,64,400/-, the assessee submitted that during the year under consideration, it had acquired the marketing and sales division of BASF India Ltd.'s leather chemical business by way of a slump sale. Considering the nature of these products, the knowhow involved in the same and in order to commence business operation, the assessee company has entered into a medium term supply agreement to procure goods for trading through the newly acquired division. Under the agreement, the seller has agreed to reserve and exclusively make available to the assessee a portion of its manufacturing capacities. As consideration for this right, the assessee paid a sum of Rs.18,52,64,400/- and has claimed the same as deduction in computation of taxable income. The assessee further submitted that the consideration has been claimed as a deduction as it did not result in creation/bringing into existence any new assets or result in any enduring benefit in the nature of capital field and benefit accruing to the assessee as a result of this payment towards exclusively rights is only revenue in nature as such deductible. In regard to this issue, the assessee submitted the copy of agreement executed with BASF India Ltd. and other related documents. The same were examined and kept on record. After considering the facts of the case and examining the filed documents, the assessee explanation on this issue is accepted."

The conclusions in paragraphs 7 and 15 of the impugned order (extracted above) are clearly incompatible and contradictory. For this reason also, the impugned order cannot be sustained.

11 Turning to the issue relating to goodwill, the contentions of the petitioner were set out in the impugned order. Thereafter, in paragraph 10 of the impugned order, the goodwill claim has been disallowed by referring to the valuation report. No reasons are assigned for rejecting the contentions of the petitioner in that regard.

12 Learned counsel for the petitioner also contends that Section 69 of the I.T. Act was wrongly invoked. On perusal of the said provision, it is evident that it applies both to assessees who are required to maintain books of account and to those who are not required to do so. This is clear from the use of the expression "books of account, if any." In the case at hand, the petitioner was required to maintain books of account. It is also the admitted position that goodwill was recorded in the books of account. In those circumstances, reliance on Section 69 is misplaced.

13 For the reasons set out above, the impugned assessment order cannot be sustained and is hereby set aside. As a consequence, the matter is remanded for reconsideration by the Assessing Officer. The Assessing Officer is directed to provide a reasonable opportunity to the petitioner,

including a personal hearing *via* Video Conference and, thereafter, pass a fresh assessment order within a period of three months from the date of receipt of a copy of this order.

This writ petition stands allowed on the above terms, sans costs. Connected W.M.Ps. stand closed.

21.06.2024

cad

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