(2012) 03 BOM CK 0008

In the Bombay High Court

Case No : IT Appeal No. 189 of 2011

CIT APPELLANT

Vs

Raymond Ltd. RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:
Income Tax Act, 1961 — Section 37(2A)

Citation : (2012) 03 BOM CK 0008

Hon'ble Judges : M.S. Sanklecha, J;D.Y. Chandiachud, J

Bench : Division Bench

Advocate : Vimal Gupta, for the Appellant; Percy J. Pardiwala with Mohan Salian, Ms. Vaijayanta Shete and Jainuddin Khan, for the Respondent

Judgement

D.Y. Chandrachud, J.—This appeal by the Revenue against the order of the Tribunal dated 22-3-2007 relates to assessment year 1990-91. The following substantial questions of law are raised:

(A) Whether on the facts and circumstances of the case and in law, the Tribunal is right in deleting the increase in disallowance under rule 6D by the AO?

(B) Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in deleting disallowance of entertainment expenditure made u/s 37(2A) as the same is incurred on employees ?

(C) Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in deleting disallowance of pre-operative expenses pertaining to establishment of textile division as revenue expenditure ?;

(D) Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in reversing the order of CIT(A) in allowing the set off of loss incurred on sale of the bonds/units ?;,

(E) Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in deleting the addition to value of inventory made by the AO?;

(F) Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in deleting the addition to value of goods in process ?

By consent the appeal is taken up for hearing and final disposal.

2. As regards question A, the AO noted that the assessee had debited to the P&L Account for the year ending 31-3-1990 a sum of Rs. 72.85 lakhs towards expenses incurred on travel out of India as against a sum of Rs. 52.56 lakhs for the immediately preceding, year. The assessee offered a sum of Rs. 3.64 lakhs towards disallowance under rule 6D computed on an estimated basis at the rate of 5 per cent of the expenses incurred on travel within India. The AO noted that there was an increase of the expenses as a percentage of total sales and service from 0.18 per cent in the immediately preceding year to 0.212 per cent in the previous year relevant to the assessment year in question. The AO was of the view that there was no reason to envisage an increase save and except for an increase in the travel fares and lodging and boarding charges. Having said this, the AO held that the whole of the expenditure attributed to the increase in lodging and boarding should be disallowed under rule 6D. An amount of 8.61 lakhs was accordingly disallowed. This disallowance was confirmed by the CIT(A). In appeal, the Tribunal has noted that the disallowance which was offered by the assessee was based on the finding of CIT(A) for the immediately preceding assessment year. Since the decision of the Tribunal is based on the order passed by the CIT(A) for the preceding year, which also had attained finality, we do not consider that any substantial question of law would arise.

3. As regards question B, the Tribunal has noted that out of the total entertainment expenditure the CIT(A) attributed 30 per cent of the expenditure as being relatable to the employees accompanying the guests of the assessee to hotels. This order of the CIT(A) was noted to be in conformity with the view taken by the Tribunal on the issue as well as in respect of the case of the assessee for the earlier assessment years. The attention of the Court has also been drawn to the fact that as a matter of fact, it was the assessee who was aggrieved by the order passed by the CIT(A) in regard to the disallowance made u/s 37(2A). The revenue was independently not in appeal before the Tribunal on this issue. In that view of the matter, the revenue can have no grievance arising out of the decision of the Tribunal which has confirmed the order passed by the CIT(A). No substantial question of law would arise.

4. As regards question C, which relates to pre-operative expenses, the Tribunal has noted that for assessment years. 1984-85 and 1985-86, the Tribunal had allowed such expenses as revenue expenditure. The order of the Tribunal for assessment year 1985-86 was confirmed by this Court. The Tribunal has accordingly followed its earlier orders. That apart, the nature of the expenses which have been adverted to in para 16 of the order of the AO would clearly indicate that there is no error in the order of the Tribunal and no substantial question of law would arise.

5. As regards question D, the counsel appearing on behalf of the Revenue states that the issue is covered against the Revenue by a judgment of the Supreme Court in Commissioner of Income Tax, Mumbai Vs. Walfort Share and Stock Brokers P. Ltd., . In view of that position, no substantial question of law would arise.

6. We admit the appeal on questions E and F and take up the appeal for hearing and final disposal by consent at this stage.

7. The AO made an addition on two counts relating to revaluation of stock: (i) an addition of Rs. 6.13 crores was made on the ground of undervaluation of goods in process as on 31-3-1990 in the textile division on account of an under-estimation and direct cost method for valuation of goods in process; and (ii) an addition was made of Rs. 14.13 crores on account of undervaluation of inventories as on 31-3-1990 on account of non-inclusion of direct costs. The addition was deleted by the CIT(A). The Tribunal has in para 16 of its decision observed as follows:

The Revenue is aggrieved on the deletion of addition on account of valuation on cost valuation of inventory and under-estimation of process costs whereas the assessee is aggrieved against the CIT (A) sustaining the additions on account of rationalised method of valuation of inventory. We have considered the rival contentions and have gone through the materials placed on record. The learned counsel for the assessee has reiterated the contentions that were made before the Revenue authorities. The Departmental Representative relied on the decision of the Hon''ble Supreme Court in the case of Commissioner of Income Tax Vs. British Paints India Ltd., . We find that the CIT(A) has elaborately discussed this aspect in paras 14 to 14.14 of his order. After going through the discussions therein, we do not find any reason to interfere with his order. After all, what is involved in assessment year 1990-91 and any disturbance to this year will again have cascading effect to all the other years. We, therefore, being in full agreement with the order of the CIT(A), confirm the same.

8. In Commissioner of Income Tax Vs. British Paints India Ltd., , the Supreme Court observed as follows:

It is not only the right but the duty of the AO to consider whether or not the books disclose the true state of accounts and the correct income can be deduced there from. It is incorrect to say, as contended on behalf of the assessee, that the officer is bound to accept the system of accounting regularly employed by the assessee the correctness of which had not been questioned in the past. There is no estoppel in these matters and the officer is not bound by the method followed in the earlier years.

Again in concluding part of the judgment the Supreme Court observed thus:

Any system of accounting which excludes, for the valuation of the stock-in-trade, all costs other than the cost of raw materials for the goods-in-process and finished products, is likely to result in a distorted picture of the true state of the business for the purpose of computing the chargeable income. Such a system may produce a comparatively lower valuation of the opening stock and the closing stock, thus showing a comparatively low difference between the two. In a period of rising turnover and rising prices, the system adopted by the assessee, as found by the Tribunal, is apt to diminish the assessment of the taxable profit of a year. The profit of one year is likely to be shifted to another year which is an incorrect method of computing profits and gains for the purpose of assessment. Each year being a self-contained unit, and the taxes of a particular year being payable with reference to the income of that year, as computed in terms of the Act, the method adopted by the assessee has been found to be such that income cannot properly be deduced there from. It is, therefore, not only the right but the duty of the AO to act in exercise of his statutory power, as he has done in the instant case, for determining what, in his opinion, is the correct taxable income.

Reading the observations of the Tribunal, it is evident that there is no independent application of mind to the issues in question. The Tribunal has appellate powers over the decision of the CIT(A) both on facts and law. The order of the Tribunal would indicate that apart from observing that the CIT(A) had elaborately discussed the issue in paras 14 to 14.14, there is no independent evaluation of the issues which arose in appeal. Moreover, the fact that what was involved for assessment year 1990-91 would have an effect on other years would not be sufficient in itself for the Tribunal not to apply its mind to the merits of question particularly having regard to the observations quoted earlier in British Paints (supra). Since the Tribunal has failed to independently evaluate the correctness of the grounds of appeal raised by the Revenue, we are of the view that it would be appropriate to restore the appeal before the Tribunal for a fresh decision on the aforesaid two grounds. We clarify that by this order we have not expressed an opinion on the merits of the rival contentions and have remitted the proceedings to the Tribunal on the ground that it has not applied its mind independently to the issues raised in the two grounds. We accordingly set aside the order of the Tribunal on the aforesaid two questions and restore the appeal to the file of the Tribunal for a decision afresh. In that view of the matter it is not necessary for the Court to express a view on the two questions of law as aforesaid. We keep all the rights and contentions of the parties including on the applicability of the decision in British Paints (supra) on the facts of this case open to be urged before the Tribunal. The appeal is accordingly disposed of. There shall be no order as to costs.