

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

WRIT PETITION NO.2738 OF 2017

Procter & Gamble Home Products Pvt. Ltd., .. Petitioner.
v/s.
Income Tax Appellate Tribunal
& Others .. Respondents.

Mr. F. V. Irani with Mr. Harsh Kapadia, for the Petitioner.
Dr. R. K. Kakkar i/b. Shyama Parkar, for the Respondents.

**CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE, JJ.**
DATE : 9th MARCH, 2018.

P.C:-

At the request of the Counsel for the parties, the Petition is being finally disposed of at the stage of admission.

2 This Petition under Article 226 of the Constitution of India, challenges the order dated 28th July, 2017 passed by the Income Tax Appellate Tribunal (the Tribunal). The challenge to the impugned order dated 28th July, 2017 is only to the extent it allows the Revenue's rectification application made under Section 254(2) of the Income Tax Act, 1961 (the Act). The Revenue's above application was allowed to the extent it recalls its order dated 6th June, 2016 of the Tribunal for Assessment Year 2004-05 in respect of rent/ compensation received for letting out business premises is classified under the head '*income from other sources*'. There is no challenge before us to the extent the impugned

order dated 28th July, 2017 allows the Petitioner's application for rectification made under Section 254(2) of the Act.

3 The grievance of the Petitioner is that the impugned order dated 28th July, 2017 to the extent it allows the Revenue's application for rectification, is without jurisdiction. This is so as it amounts to review of its order dated 6th June, 2016 which had been passed in an appeal for Assessment Year 2004-05 after due consideration of the very issue. In any case, the issue raised is a debatable issue. Therefore, outside the scope of rectification under Section 254(2) of the Act.

4 Briefly, the facts leading to this Petition is that on 6th June, 2016, the Tribunal allowed the Petitioner's appeal under Section 254(1) of the Act by holding that the amount received by it as rent/compensation from its sister concern for utilization of a part of its premises is to be classified as '*income from other sources*'. This after negating the alternate contention of the Petitioner that rent/compensation should be classifiable under the head '*business income*' as also Revenue's contention that it is classifiable under the head '*income from the house property*'. This, the Tribunal did by following the order of its Coordinate Bench (on identical facts) in the case of M/s. Procter & Gamble Hygiene & Healthcare Ltd., (sister concern) for the Assessment Years 1996-97, 1997-98, 1998-99, 1999-2000 and 2000-01. In all the aforesaid cases, on identical facts it has been held that the rent/compensation received has to be taxed under the head '*income from other sources*'.

5 The Respondent-Revenue had filed Miscellaneous Application

on 28th April, 2017, seeking to rectify the order dated 6th June, 2016. This essentially on the following grounds:-

- (a) the order dated 6th June, 2016 was passed without considering the written submission which were filed on behalf of the Revenue; and
- (b) the order dated 6th June, 2016 had erred in relying upon the orders passed in the sister concern case for Assessment Years 1996-97 to 2000-01 to allow the appeal. This in view of the fact that all of them proceeded on a fundamentally wrong basis namely – that the issue stands concluded by an order passed by the Tribunal for Assessment Year 1995-96 in respect of the sister concern. This was not so as in fact, as it did not consider the claim of the Revenue that rent/ compensation is chargeable to tax under the head '*income from the house property*' while holding it to be taxable as '*income from other sources*'.

6 The impugned order of the Tribunal dated 28th July, 2017 does not recall its order dated 6th June, 2016 on the first ground urged by the Revenue viz- that the written submission filed by the Respondent-Revenue, was not considered while passing the order dated 6th June, 2016. The impugned order re-call its order dated 6th June, 2016 only on the second ground that the reliance by the Tribunal on its earlier order in respect of the sister concern was not correct. This as those orders in turn it relied upon an earlier order for Assessment Year 1995-96 of the Tribunal which did not have any occasion to deal with submission regarding the classification of the rent/compensation under the head '*income from house property*'.

7 We note that the order of the Tribunal dated 6th June, 2016 while allowing Petitioner's appeal, had relied upon the sister concern's order passed by the Tribunal in respect of Assessment Years 1996-97 to 2000-01. Admittedly, all the orders of the Petitioner's sister concern relied upon by the order dated 6th June, 2016 had an issue with regard to the classification of rent/compensation being received on letting of property under the head '*income from the house property*' or '*income from other sources*'. Therefore, it followed the same. The order of the Tribunal in respect of its sister concern for Assessment Year 1995-96 was also before the Tribunal while passing the order dated 6th June, 2016.

8 Therefore, the rectification application of the Revenue calls upon the Court to re-appreciate its understanding of the order passed by the Tribunal in the case of its sister concern for Assessment Years 1996-97 to 2000-01. This on the ground that the earlier orders did not correctly understand/ interpret the order passed by the Tribunal in respect of Assessment Year 1995-96 in the case of Petitioner's sister concern. This, itself would in effect amount to Review. Therefore, outside the scope of rectification. Besides, it seeks to sit in appeal our order passed by its Coordinate Bench for Assessment Years 1996-97 to 2000-01. This is not permissible.

9 Moreover, the Revenue has filed appeals in the sister concern case for the Assessment Years 1996-97 to 2000-01 under Section 260A of the Act to this Court. The question raised therein is on the issue of appropriate classification of the rent/ compensation under the head '*income from the other sources*' or under the head '*income from the house property*'. The aforesaid appeals have been admitted and are awaiting

consideration for final disposal. Till such time, as the orders of the Tribunal of its Co-ordinate Bench in respect of the Assessment Years 1996-97 to 2000-01 are set aside or are stayed pending the final disposal, its ratio would, *prima facie*, continue to be binding. Therefore, even if the Revenue seek to contend to the contrary it would be a debatable issue. This cannot be a subject matter of rectification.

10 Therefore, in view of the above, we set aside the impugned order dated 28th July, 2017 of the Tribunal to the extent it allows the Revenue's application for rectification of the order dated 6th June, 2016 of the Tribunal.

11 Accordingly, **Petition allowed** in above terms. No order as to costs.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)