

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.10 OF 2019
(@SLP(C) No.37/2019 @Diary No.32695/2018)

COMMISSIONER OF INCOME TAX
(LARGE TAX PAYER UNIT)

APPELLANT(s)

VERSUS

M/S RELIANCE INDUSTRIES LTD

RESPONDENT(s)

WITH
CIVIL APPEAL NO.11 OF 2019
(@SLP(C) No.35/2019 @Diary No.29863/2018)

CIVIL APPEAL NO.12 OF 2019
(@SLP(C) No.38/2019 @Diary No.30030/2018)

CIVIL APPEAL NO.13 OF 2019
(@SLP(C) No.39/2019 @ Diary No.36149/2018)

O R D E R

Delay condoned.

Exemption from filing certified copy of the impugned judgment granted.

Leave granted.

These appeals have arisen from the judgment of the Bombay High Court dated 22 & 23 August, 2017 for Assessment Years 2003-04, 2004-05, 2005-06 and 2006-07.

The High Court has passed a common order for all the Assessment Years. Learned counsel for the assessee states that all the questions which have been framed do not necessarily arise for each Assessment Year. A chart has been tendered, explaining the position. The chart is taken on the record.

The appeals by the Revenue raise the following questions:

1. Whether the High Court is correct in holding that interest amount being interest referable to funds given to subsidiaries is allowable as deduction under Section 36(1)(iii) of the Income Tax Act, 1961 (for short 'the Act') when the interest would not have been payable to banks, if funds were not provided to subsidiaries;
2. Whether on the facts and in the circumstances of the case and in law, the High Court is correct in upholding the Tribunal's view that prior to insertion of Explanation-5 to Section 32 of the Act, the claim of depreciation was optional and could not be thrust on the assessee, if it had not claimed it;
3. Whether on the facts and in the circumstances of the case and in law, the High Court is correct in upholding the Tribunal's view that pre-operative expenses incurred in connection with creation of plant & machinery in units which have not commenced production, are revenue in nature;
4. Whether on the facts and in the circumstances of the case and in law, the High Court is correct in upholding the Tribunal's view that expenditure on estimated basis cannot be reduced from dividends for deduction under Section 80M of the Act; and

5. Whether on the facts and in the circumstances of the case and in law, the High Court is correct in upholding the Tribunal's view in sustaining the deletion of the Transfer Pricing adjustment made to consultancy charges, especially when the TPO had adopted the same mark up in relation to its European associate, what the assessee itself had adopted in relation to its USA associate.

Insofar as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03.

In view of the above findings, we find no reason to interfere with the judgment of the High Court in regard to the first question. Accordingly, the appeals are dismissed in regard to the first question.

Insofar as the second question is concerned, the issue, it is common ground, is governed by the decision of this Court in Plastiblends India Limited Vs. Additional Commissioner of Income Tax, Mumbai and Another¹.

¹ (2017) 9 SCC 685

The High Court has not had the benefit of the decision of this Court. Hence, we are of the view that it would be appropriate to remand the issue for fresh decision by the High Court bearing in mind the law laid down in the above case. We keep open all the rights and contentions of the Revenue and the assessee in regard to the applicability of the provision for the relevant Assessment Years.

As regards, the third question pertaining to pre-operative expenses; the fourth question pertaining to the deduction under Section 80M of the Act; and the fifth question pertaining to transfer pricing, the High Court has failed to independently evaluate the merits of the departmental appeals. Hence, we consider it appropriate that the aforesaid questions are considered afresh by the High Court.

In order to facilitate a fresh exercise being conducted in relation to the aforesaid four questions (Question Nos.2,3,4 and 5), we allow the appeals and set aside the impugned judgment of the High Court. The appeals stand restored to the file of the High Court for that purpose.

This Court has been apprised of the fact that appeals are pending before the High Court against two other questions. Hence, it would be open to the parties to apply to the High Court for a consolidated hearing. These appeals are accordingly disposed of. There shall be no order as to costs.

.....J.
(DR. DHANANJAYA Y. CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
JANUARY 02, 2019

ITEM NO.9

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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Date : 02-01-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s) **Mr. Rupesh Kumar, Adv.**
 Mr. D.L. Chidanand, Adv.
 Mr. Shreyash Bhardwaj, Adv.
 Mrs. Anil Katiyar, AOR

For Respondent(s) **Mr. R. Venkatraman, Sr. Adv.**
 Mr. K. R. Sasiprabhu, AOR
 Mr. Amit K. Mathur, Adv.
 Mr. Somiran Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

**Exemption from filing certified copy of the impugned
 judgment granted.**

Leave granted.

The appeals are disposed of in terms of the signed order.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)