IN THE HIGH COURT OF JUDICATUR E AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

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INCOME TAX APPEAL NO. 2088 OF 2013

Commissioner of Income Tax-7 .. Appellant
Vs.
M/s. Sonic Biochem Extractions Pvt. Ltd. .. Respondent

Mrs. S. V. Bharucha for the Appellant.
Mr. K. Shivram, Sr. Counsel a/w. Mr. Rahul Hakani for the Respondent.

CORAM : M.S.SANKLECHA &
G.S. KULKARNI, JJ.
DATE : 17th NOVEMBER, 2015.

P.C.

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act) challenges the order dated 20.03.2013 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order relates to the Assessment Year 2005-06.

2. The appellant has raised the following questions of law for our consideration:

(a) "Whether on the facts and circumstances of the case the Tribunal is justified in holding that the assessee is eligible to claim depreciation in respect of plant & machinery of discontinued business without appreciating the fact that the basic condition for claiming depreciation u/s. 32 of the Act is the "use of asset" for business purpose of the assessee?

(b) Whether on the facts and circumstances of the case the Tribunal was correct in holding the plant and machinery of discontinued business, which is not likely to be revived, in a block of asset with

written down value is eligible for claim of depreciation?

(c) Whether on the facts and circumstances of the case the Tribunal is justified in setting aside the issue of assessee's claim of "loss due to fire" to the file of the Assessing Officer without properly appreciating the fact that the loss is attributable to the fixed asset?"

(d) Whether on the facts and circumstances of the case the Tribunal is justified in upholding the method adopted by the assessee to devalue the closing stock from Rs.14,25,705/- to Rs.1/- without appreciating the fact that this method is contrary to the provisions of section 145A and also the accounting standard?"

3. Re:- question Nos.(a) & (b) :

(a) The respondent assessee had claimed depreciation in respect of its machinery valued at Rs.16.96 lacs which was used in its business of refining edible oil. The machinery had not been used during the assessment year as the respondent has discontinued its business of refining edible oil. The above depreciation was claimed on the block of assets on the written down value including the refining edible oil machinery. The Assessing Officer disallowed the claim of depreciation on the ground that one of the twin requirements of ownership and user under Section 32(1)(ii) of the Act viz. user was not satisfied.

(b) On appeal the Commissioner of Income Tax (Appeals) held that in the absence of the Machinery being put to use and the business of Refining edible oil having been discontinued, the respondent is not entitled to depreciation. Thus the order of the Assessing Officer was undisturbed to the extent it disallowed depreciation of Rs.16.96 lacs.

(c) On further appeal to the Tribunal the impugned order held that the refining machinery was a part of the block of assets of plant and machinery. In such a case depreciation is granted to the entire block of assets whether or not an individual item therein has been used during the subject assessment year. In support the impugned order placed reliance upon its decision in the case of **DCIT Vs. Boskalis Dredging India (P) Ltd. 53 SOT 17 (Mum)** wherein it has been held that once the concept of block of assets was brought into effect from assessment year 1989-90 onwards then the aggregate of written down value of all the assets in the block at the beginning of the previous year along with additions made to the assets in the subject Assessment Year depreciation is allowable. The individual asset looses its identity for purposes of depreciation and the user test is to be satisfied at the time the purchased Machinery becomes a part of the block of assets for the first time. In the circumstances the respondent's appeal was allowed and the disallowance of depreciation was deleted.

(d) Mrs. Bharucha, learned Counsel for the revenue fairly states that the issue arising herein is identical to the issue which arose before the Tribunal in **Boskalis Dredging India** (supra) where also the dredger concerned was a part of the block of assets and not put to use. On instructions, she further states that the Revenue has accepted the decision of the Tribunal in **Boskalis Dredging India** (supra) which the impugned order has merely followed. No distinguishing feature in the present facts has been pointed out which would warrant taking a different view. Besides the Tribunal in its order in **Boskalis Dredging India** (supra) placed reliance upon the decision of this Court rendered in an appeal filed by the Revenue in **G. R. Shipping Ltd. being Income Tax Appeal No. 598 of 2009** which was dismissed on 20.07.2008 upholding the view of the Tribunal on identical issue. Moreover it is clarified

by the counsel that the refining machinery has itself been sold during the next year.

(e) In the above view question Nos.(a) & (b) as formulated do not give rise to any substantial questions of law. Accordingly not entertained.

4. Re:- question No.(c)

(a) During the subject assessment year there was fire in the chemical plant of the respondent at Pithampur. The respondent had debited an amount of Rs.21.68 lacs in its profit & loss account as loss due to fire. This was the difference between the amount claimed for repairs due to fire from the Insurance company and that granted. The Assessing Officer disallowed the loss claimed to the extent of Rs.10.82 lacs being attributable to fixed assets i.e. factory building, plant & machinery. Therefore not revenue in nature.

(b) In appeal, the Commissioner of Income Tax (Appeals) did not disturb the finding of the Assessing Officer. On further appeal the Tribunal by the impugned order accepted the respondent's contention that the amount returned as loss was revenue in nature as the amount claimed and not granted by the Insurance Company was expenditure for repair of factory Building and Plant & Machinery. This expenditure as repairs was allowable as revenue under Sections 30 and 31 of the Act in principle. In the circumstances the impugned order of the Tribunal set aside the order of the Commissioner of Income Tax (Appeals) and restored the issue to the Assessing Officer to examine whether the expenditure claimed was incurred for repairs of Building and Plant & Machinery affected by the Fire.

(c) We are informed at the Bar that consequent to the impugned order of the Tribunal, the Assessing Officer has now passed an order on 31.03.2015

allowing the petitioner's claim for revenue expenditure of Rs.10.82 lacs as being spent for repairs. A copy of the order dated 31.03.2015 of the Assessing Officer is handed over across the Bar. The view taken by the Tribunal in principle that the amounts spent on repairs has to be allowed under Sections 31 and 32 of the Act cannot be faulted.

(d) Accordingly the question as raised does not give rise to a substantial question of law. Therefore question No.(c) is not entertained.

5. Re:- question No.(d)

(a) During the subject assessment year the respondent assessee had debited an amount of Rs.14.25 lacs in the profit and loss account as devaluation of closing stock. This resulted in the closing stock being devalued from Rs.14.26 lacs to Rs.1. This devaluation of a part of its closing stock was in respect of packing material which were used for goods which were non moving items. This resulted in the packing material had remaining unsold in its possession for the long period of time and had now become obsolete. The Assessing Officer did not accept the devaluation of the closing stock to Rs.1/- holding that the same is contrary to Section 145A of the Act.

(b) On appeal, the Commissioner of Income Tax (Appeals) did not disturb the findings of the Assessing Officer on the ground that the details of subsequent sale of the stock were not furnished. On further appeal, the Tribunal by the impugned order held that on the basis of the record available that packing material which had been devalued had batch Nos. price etc., already printed thereon and these were not used and could not be used now due to lapse of time, thus making it of no value. The impugned order further records that the packing material incapable of use would be subsequently sold as scrap, if it is not destroyed. In case of sale the consideration for the

same could be reflected in the future and offered to tax. The impugned order also placed reliance upon its decision in **Emersons Process Management India (P.) Ltd. Vs. Additional Commissioner of Income-tax, Range 3(1), Mumbai [2011] 13 Taxmann.com 149 (Mum)** and allowed devaluation of closing stock from Rs.14.25 lacs to Rs.1/- as claimed by the respondent assessee.

(c) We find that the entire exercise of devaluation of stocks is essentially a question of fact and before us the same is not urged as being perverse. The Revenue is contending that it is contrary to Section 145A of the Act. However nothing is shown to us in support of its contentions. Devaluation of stock due to obsolescence is a feature not unknown to business (See the decision of this Court in **Alfa Laval India Ltd. Vs. Deputy Commissioner of Income tax, 266 ITR 418** as upheld by the Supreme Court in **Commissioner of Income Tax Vs. Alfa Laval (India) Ltd., [2007] 295 ITR 451 (SC)**.

(d) In the above circumstances in the present facts the findings of the Tribunal that the stock of packing materials had become obsolete warranting a reduction in its value is a finding of fact not shown to be perverse. Accordingly question No.(d) does not raise a substantial question of law. Thus not entertained.

6. Accordingly, appeal is dismissed. No order as to costs.

(G.S.KULKARNI, J.) **(M.S.SANKLECHA, J.)**