

O-94 & 95

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITA/96/2007
COMMISSIONER OF INCOME TAX, KOLKATA-III, KOLKATA
VS.
INDIAN ALUMINIUM CO. LTD.

ITA/173/2007
INDIAN ALUMINIUM CO. LTD.
VS.
COMMISSIONER OF INCOME TAX, KOLKATA-III, KOLKATA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 5th January, 2023

Appearance :
Mr. Om Narain Rai, Adv.
...for the revenue.

Mr. J.P. Khaitan, Sr. Adv.
Ms. Arati Agarwal, Adv.
Ms. Rosy Banerjee, Adv.
Mr. Binayak Gupta, Adv.
...for the assessee

The Court : These appeals filed by the revenue as well as the assessee under section 260A of the Income tax Act, 1961 (the Act) are directed against the order dated October 20, 2006, passed by the Income Tax Appellate Tribunal 'A' Bench, Kolkata (Tribunal) in ITA 1221/Kol./2006 and ITA 1045/Kol./2006, for the assessment year 2002-03.

The appeal being ITA 173 of 2007 was admitted on 7th May, 2008 on the following substantial questions of law :-

“Whether on the facts and in the circumstances of the case the learned Tribunal was justified in law in not allowing :

- (i) the claim of the assessee for full relief under section 80IB of the Act,
 - (ii) amount paid to Bengal Club Ltd. by way of contribution without considering the decision of jurisdictional High Court reported in 267 ITR 121 delivered in similar facts and circumstances,
 - (iii) the expenditure incurred by the assessee for repairing and replacement of old parts of plant and machinery,
 - (iv) service charges paid to the Birla Management Corporation Ltd. without considering and recording the decision of the Tribunal in the case of Punjab Breweries Ltd. vs. ACIT reported in 100 Taxman 278 and the judgment delivered in the case of Eicher Motors Ltd. reported in 82 TTJ 61,
 - (v) a sum of Rs. 51,86,256/- incurred by the appellant on community development without considering the decision of the Madras High Court reported in 266 ITR 170 and the decision of the Karnataka High Court reported in 166 ITR 866 and the Tribunal's decision reported in 96 ITD 186,
 - (vi) The contribution made towards person scheme under Section 43B of the Act before filing of the return by the appellant without considering the judgments reported in 284 ITR 619, 100 ITD 199(2004) 1 SOT 210,
 - (vii) A part of interest on borrowed funds without considering the decision of jurisdictional High Court reported in 134 ITR 816 approved by the Supreme Court in 224 ITR 627 and
 - (viii) Interest on borrowed fund under section 36(1)(iii) of the Act without considering the Supreme Court ruling reported in 288 ITR1(SC).
2. Whether on the facts and in the circumstances of the case learned Tribunal was justified in law in making the addition of Rs.22,93,311/- in

respect of unutilized MODVAT credit for the relevant previous year without even considering that the treatment for accounting of MODVAT credit applied by the appellant was in accordance with the approved method of accounting duly approved by the ICAI and has been regularly followed by the appellant and also has been accepted by the revenue and without even considering the decision reported in 261 ITR 275 (SC) and the decision of the Delhi Bench of the Tribunal in the case of DCIT vs. HCL Infosystems Ltd.?”

The appeal being ITA 96 of 2007 was admitted on 8th March, 2007 on the following substantial question of law :-

“1. Whether on the facts and circumstances of the case, the Ld. Tribunal was justified in law regarding reduction of disallowance under section 14A of the Income-tax Act to Rs.50 lakhs instead of Rs.20,74,80,418/- and for reduction of disallowance under section 14A to 20 lacs instead of Rs.8,08,62,345/- without observing the facts and findings of the Assessing officer and as such the same is perverse or not?”

Since the revenue as well as the assessee are aggrieved by the order passed by the Tribunal, these appeals were heard together and are disposed of by this common judgment and order.

We have heard Mr. Om Narain Rai, learned standing counsel appearing for the revenue and Mr. J.P. Khaitan, learned senior counsel assisted by Ms. Arti Agarwal, learned advocate appearing for the assessee.

Before we embark upon and exercise to decide the substantial questions of law, our attention was drawn by the learned advocates appearing for the parties the manner in which the learned Tribunal had disposed of the appeal. The order passed by the Tribunal runs into 24 pages. Thus, one gets an impression that it

is a very detailed and reasoned order passed by the Tribunal. However, on a closure scrutiny we find that the Tribunal has abrogated its responsibility in its entirety which is heavily cast upon the learned Tribunal being the last fact-finding authority in the hierarchy of authorities. By way of illustration we can point out that in paragraph 11 of the order passed by the Tribunal, the findings rendered by the Commissioner of Income Tax (Appeals) [CIT(A)] has been adopted by the Tribunal verbatim as its own findings and so much so, even the directions given by the CIT(A) to the Assessing Officer has been copied verbatim.

Further, we find that though the learned Tribunal has recorded that it had heard the submissions of the learned authorised representative of the assessee as well as the department representative, the submissions made by the authorised representative have not been noted or recorded. The learned Tribunal has stated that the authorised representative has given detailed submission on behalf of the assessee which are all contained in detail in the order of the CIT(A) and, therefore, need not be repeated again. It is seen that all the grounds which have been canvassed before the Tribunal have been dealt with in the very same fashion. Further, we note from paragraph 55 of the impugned order that the Tribunal has verbatim extracted the grounds raised by the parties and in paragraph 60 the Tribunal has held as follows:

“We have examined the rival submissions. We find no infirmity in the order of the CIT(A) which is confirmed. The appeal of the assessee is dismissed on the 10th ground.”

In a similar fashion the other grounds have also been dealt with as could be seen from paragraph 73 to 79. Thus, it is clear that the order passed by the Tribunal is without any application of mind and suffers from utter perversity. In fact, the order of the learned Tribunal is a classical example of as to how an

order should not be drafted. We are informed that though the assessee had filed a miscellaneous application with a prayer to decide all issues by passing a reasoned order, such application was dismissed by the learned Tribunal on the ground that it would tantamount to review.

Thus, we are fully satisfied that the order of the Tribunal has to be set aside in its entirety. In the result, the appeals filed by the revenue (ITA/96/2007) as well as the assessee (ITA/173/2007) are allowed and the order passed by the Tribunal is set aside and remanded to the Tribunal for fresh consideration.

Consequently, the substantial questions of law which were admitted are left open.

We make it clear that the learned Tribunal shall decide all grounds which are canvassed before it by the assessee as well as the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)