

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 6TH DAY OF OCTOBER 2017/14TH ASWINA, 1939

ITA.No. 52 of 2015 ()

AGAINST THE ORDER IN ITA 3/2013 of I.T.A.TRIBUNAL, COCHIN BENCH DATED
22-11-2013

APPELLANT/RESPONDENT:

THE COMMISSIONER OF INCOME TAX, THIRUVANANTHAPURAM
TRIVANDRUM

BY ADVS.SRI.P.K.R.MENON, SR.COUNSEL, GOI (TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

RESPONDENT/APPELLANT:

OLAM AGRO INDIA LIMITED, BISHOP JEROME NAGAR, KOLLAM
691 001

R1 BY ADV. SRI.P.RAVEENDRAN PILLAI
R1 BY ADV. SMT.INDIRA RAVEENDRAN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
06-10-2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ITA No.52 of 2015

APPENDIX

APPELLANT'S ANNEXURES:

ANNEXURE A TRUE COPY OF THE ORDER OF THE DISPUTE RESOLUTION PANEL,
BANGALORE DTD.28.8.2012.

ANNEXURE B TRUE COPY OF THE ORDER U/S 143(3) R.W.S.144C(13) OF THE
JOINT COMMISSIONER OF INCOME TAX, KOLLAM DTD.27.12.2012.

ANNEXURE C TRUE COPY OF THE ORDER OF THE APPELLATE TRIBUNAL
DTD.22.11.2013.

TRUE COPY

P.S.TO JUDGE

css/

Antony Dominic & Dama Seshadri Naidu, JJ.

ITA No.52 of 2015

Dated this the 6th day of October, 2017

JUDGMENT

Antony Dominic, J.

This appeal is filed by the revenue impugning the order passed by the Income Tax Appellate Tribunal in ITA No.3 of 2013 concerning the assessment year 2008-2009. The assessee is a subsidiary company of M/s Olam Investments Ltd., Mauritius. During the course of the assessment, the Assessing Officer passed a draft order under section 144C making an addition of ₹63,73,179 by disallowing loss under derivatives contract, along with other additions. The assessee challenged the additions proposed before the Dispute Resolution Panel, Bangalore. The Dispute Resolution Panel issued its directions under section 144 read with section 144C (9) of the Income Tax Act rejecting the objections of the assessee and upholding the assessments made by the assessing officer. Annexure-A is the copy of the direction issued by the Dispute

Resolution Panel. The Joint Commissioner of Income Tax completed the assessment under Section 143(3) read with section 144C(13) of the Act estimating the total income of the assessee which included the disallowance of an amount of ₹63,73,179. Annexure-B is the assessment order. The assessee filed an appeal before the Income Tax Appellate Tribunal and by Annexure-C order the Tribunal held that the Assessing Officer was not justified in making the impugned disallowance of ₹63,73,179 and accordingly, set aside to that extent. It is the order of the Tribunal to the above extent which is impugned by the revenue and the questions of law framed read as under:

- a) Was the assessee entitled to change the system of accounting for the assessment year 2008-09?
- b) Is the order of the Tribunal erroneous for having deleted the amount of Rs.63,73,179/- disallowed under Loss on forward contracts by the assessing officer when the changed system of accounting was not in force for the assessment year 2008-09?
- c) Did the Tribunal act contrary to law in interfering with the disallowance of Rs.63,73,179/-, having regard to the reasoning contained in the assessment order?

2. We heard the learned senior counsel and the learned

counsel for the assessee.

3. The orders show that the assessee was maintaining its accounts on the basis of the instructions issued by the Institute of Chartered Accountants of India. While so, the institute revised its instructions and issued AS-31, making it mandatory only with effect from the financial year 2011-2012. However, the assessee adopted AS-31 for the assessment year 2008-2009, which, according to the Assessing Officer, resulted in loss of revenue. It is on that basis the Assessing Officer made the impugned disallowance and consequent addition to the total income of the assessee. Despite our specific query as to whether there was any statutory prohibition preventing the assessee from adopting AS-31 for the assessment year 2008-2009, the revenue was unable to show us any such statutory bar. In other words, it is evident from the submissions made by the revenue itself that the assessee was legally entitled to adopt AS-31 for the assessment year 2008-2009. If that be so, the Assessing Officer could not have faulted the assessee for having adopted AS-31 for the assessment year 2008-2009 and maintained its account on that basis.

The revenue has no case that if AS-31 was validly adopted by the assessee, the assessee could not have been allowed deduction towards loss under derivative contracts of ₹63,73,179. Therefore, the conclusion is irresistible that the assessee was legally entitled to adopt AS-31 for the assessment year 2008-2009 and on such adoption, the assessee was entitled to the deduction as well. If that be so, the Tribunal was fully justified in its conclusion that the Assessing Officer was not justified in making the impugned disallowance of ₹63,73,179. Therefore, we do not find any illegality in the order of the Tribunal.

Answering the questions of law in favour of the assessee and against the revenue, the appeal is dismissed.

sd/- Antony Dominic, Judge

sd/- Dama Seshadri Naidu, Judge

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true copy

P.S.TO JUDGE