HIGH COURT OF JUDICATURE AT BOMBAY

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

INCOME TAX APPEAL NO. 1906 OF 2013

The Commissioner of Income Tax-16,
Mumbai
Matru Mandir, Tardeo Road, Mubmai .. Appellant
v/s.
M/s. Ratilal Becharlal & Sons
401/402, Prasad Chambers,
Mumbai ..Respondent

Mr. A.R. Malhotra a/w. Mr. N.A. Kazi for the appellant
Mr. Naresh Thacker a/w Nanda Gopal i/b Economics law practice

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, J.J.
DATED : 24th NOVEMBER, 2015.

P.C.

1. In this appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act') the challenge is to the order dated 7th November, 2012 passed by the Income Tax Tribunal (for short 'the Tribunal'). The impugned order dated 7th November, 2012 is in respect of the Assessment Year 2007-08.

2. The Revenue urges the following questions of law for our consideration :-

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"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the adjustment arising out of the Arms Length Price (ALP) is to be restricted to only International Transactions with the Associated Enterprise instead of entire turnover of the assessee ?

(ii) Whether on the facts and in the circumstances of the case and in law, the order of the Tribunal is not perverse in view of the fact that considering the mean margin figure of 5.34% as adopted by the Tribunal, the ALP determined by the TPO is Rs.53,68,52,698/- whereas in para 12 of its order, the Tribunal states that the ALP of AE sales as computed by the TPO after applying 5.34% comes to Rs.50,20,74,010/-and assessee's sales to AE is Rs.49,81,00,499/- and there is thus disparity in the figures arrived at though the PIL value of 5.34% for both the TPO and Tribunal remain the same and that there is no basis for its conclusions based on the computation figures so derived?"

3. <u>Re. :- Question No.(i)</u>

(a) During the subject assessment year, the Respondent Assessee had both domestic and international transactions including transactions with Associated Enterprises over and above

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transaction with independent third parties.

(b) The Tribunal by the impugned order rejected the Revenue's contention that the adjustment arising out of the Arms Length Price (ALP) has to be made to the entire turnover of the Respondent Assessee instead of restricting the same only to the International Transactions entered into by the Respondent Assessee with its Associated Enterprises. The Tribunal by the impugned order negatived the contention as the same is contrary to the clear mandate for Section 92 of the Act, which permits taxation only of income arising from International Transactions having regard to its ALP.

(c) The Revenue being aggrieved submits that the adjustment has to be made on the entire universe of transactions entered into by the Respondent Assessee and not restricted only to its International Transactions with Associated Enterprise. In support, reliance was placed upon the fact that two appeals filed by the Revenue being Income Tax Appeal No.298 of 2013 (The Commissioner of Income Tax Vs. M/s. Super Diamonds) and Income Tax Appeal No.2068 of 2011 (The Commissioner of Income Tax Vs. Ankit Diamonds) raising a similar issue have been

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admitted on 5th May, 2014 and 16th February, 2015 respectively. On the other hand, the Respondent Assessee invites our attention to the decision of this Court in ***Commissioner of Income Tax-8 Vs. M/s. Tara Jewels Exports Pvt. Ltd. being Income Tax Appeal No. 1814 of 2013,*** decided on 5th October, 2013 and ***Commissioner of Income Tax Vs. Keihin Panalfa Ltd. in ITA No.11 of 2015*** decided on 9th September, 2015, wherein the view taken by the Tribunal in the impugned order has been approved.

(d) Chapter X of the Act *inter alia* deals with computation of income from international transactions having regard to the ALP. Section 92 thereof specifically brings to charge income arising from International Transactions with an Associated Enterprise to tax on computation of income having regard to the ALP of the transactions entered into between the Associated Enterprises, as the heading of Chapter X itself indicates that these are special provisions relating to avoidance of tax and the mandate is to ensure adjustment in respect of the International Transactions with Associated Enterprise or specified domestic transaction on the determination of ALP. It does not allow adjustment of the income on the basis of determining of ALP in

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respect of all the Assessee's transactions. If the contention of the Revenue is to be accepted, it would result in taxing non-existing income / profits of transactions entered into between the Respondent Assessee and independent third parties. This in the present fact, even in the absence of an allegation that the transactions with parties other than Associated Enterprise is not at ALP. The transactions with parties other than the International Transactions with Associated Enterprise or in respect of specified domestic transactions are not within the ambit of Chapter X of the Act. In fact, a similar question arose for our consideration in Tara Jewels Exports Pvt. Ltd. (Supra) and an identical contention was negatived. So also the Delhi High Court in Keihin Panalfa Ltd (Supra) has negatived a similar contention.

(e) In the facts and circumstances of the present case, the question as proposed would be contrary to the plain meaning and interpretation of Chapter X of the Act. Therefore, question of law as proposed, does not give rise to any substantial question of law. Thus, not entertained.

4. The appeal is admitted on question no. (ii).

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5. The Registry is directed to communicated a copy of this order to the Tribunal. This could enable the Tribunal to keep the papers and proceedings in respect of the present Appeal available to be produced in the Court, if so required.

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

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