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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 12th February, 2015

+ ITA 536/2010

COMMISSIONER OF INCOME TAX Appellant
Through Mr. Kamal Sawhney, sr. standing
counsel

versus

SIVALIK CELLULOSE LTD Respondent
Through Mr. Satyen Sethi, Adv. with Mr. Arta
Trana Panda and Ms. Vandana
Bhatnagar, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The following two questions of law were framed by the Court at the stage of admission:

“A. Whether on the facts and in the circumstances of the present case, the Tribunal was justified in law in deleting the disallowance made by the Assessing Officer amounting to ₹1.52 crores on account of claim made by the assessee towards cost paid to Hindustan Lever Ltd. for salary of Managers, Officers on deputation?

B. Whether the Tribunal was justified in law in upholding the order

passed by the CIT (Appeals) deleting the addition of ₹24.30 crores made by the AO on account of a claim for additional payment for earlier years towards short payment of processing charges?”

2. The brief facts are that the assessee who was originally incorporated in 1975, set up a paper plant, started incurring losses and faced winding up proceeding during which rehabilitation proposals were made. Subsequently, at the request of financial institutions who backed the rehabilitation plant, Hindustan Lever Ltd. (HLL) agreed to participate in the rehabilitation proposal and accordingly a scheme of compromise was drawn on 15.2.1990. In terms of this arrangement HLL had five nominees on the Board of Directors of the assessee; the promoter had one nominee and financial institutions had three nominees. The rehabilitation scheme was to end on 30.9.2004. HLL however decided not to continue with the operations of the company and withdraw from management on 30.9.2004. Possession of the plant was handed over by HLL to the financial institution, IDBI on 1.10.2004. IDBI thereafter acting as the largest shareholder resumed management of the affairs of the company. There was subsequent share transfers etc. with which this Court is not concerned.

3. For FY 2004-05, corresponding previous year 2003-04, the assessee in its returns had inter alia made provision to the tune of Rs.1.52 crores on account of a debit note raised by HLL at the time of the handing over docket drawn to the company. The AO held that this debit note pertained towards salary payable for the period 1998-2002. The then management of the assessee Board acting upon the HLL's letter of 27.10.2003, accepted the proposals in the meeting held on 4.12.2003 and accordingly charged the expense to the P & L account. This was disallowed by the AO and brought

to tax. The other amount i.e Rs.24,30,000/- was raised as a claim by the assessee from HLL as short-payment of processing charges when the latter was managing its affairs in terms of rehabilitation scheme. The AO noted that the company had filed a petition based mainly against HLL demanding these amounts as short-payments on account of processing charges. The AO sought to bring these amounts to tax on the basis that according to the mercantile system the assessee ought to have included these in P & L account.

4. Since the assessee was aggrieved by these additions it approached the CIT, who directed deletion of both the amounts. It was held by the CIT firstly that merely because the liability of 1.52 crores pertained to earlier years its deduction could not have been disallowed. It was observed that this liability has crystallized on account of Board Resolution of 4.12.2003. Speaking about the other amount i.e. 24.3 crores, the CIT noted as follows :

“5.3 Now the same principles are to be applied to the other item. The amount of Rs 24.30 crores was also taken by the AO from the appellant's petition filed before the High Court against HLL who was managing the company's affairs for 12 years as per Rehabilitation scheme. This claim was therefore not even in the form of a bill raised on HLL for any goods or services. It was a claim for additional payment for earlier year's period which according to the present management HLL was supposed to pay. By simply filing a petition to the court the appellant does not get any right to receive the said income. As is obvious from the reply of HLL against appellant's petition filed before the court, the HLL has completely denied any such liability to pay additional amount. The issue is under dispute and it is within the jurisdiction of the court and accordingly sub-judice. Only when the court decides the issue and directs any further payment from HLL to

appellant company, does the appellant will get a right to receive that amount which again of course would be subject to further dispute by HLL before higher appellate authorities. Prior to the decision of court on appellant's petition, there is neither any liability on HLL to pay (it is at most a contingent liability in their case) nor is there any right to receive or accrual of income in the case of appellant. The case would have been entirely different if the appellant would have got a right to receive some additional amount pertaining to earlier years either because of some court order (legal right) or agreed by the other party (contractual right). In that case, by applying the principles of accrual, the amount would have been taxable even though pertaining to earlier years and even if not actually received. But since the appellant has not obtained any right to receive and has simply filed a petition before the court, the addition to its income is not justified.

5.4 There is another reason because of which the addition is not correct. Even without prejudice to the fact that the petition does not give any right to receive, it is to be noted that the petition before Delhi High Court filed by the appellant in May 2006. Therefore the claim for additional amount from HLL was for the first time made in FY 06-07 which relevant to AY 07-08. Hence other wise also no action of what ever nature could have been taken in the year under appeal because the ITA No.2906/Del./2007 events based on which addition has been made did not take place in the relevant accounting year. In any case since it has been held that the appellant does not have any right to receive any additional income from HLL merely by filing a petition, the addition of Rs 24.30 crores is deleted.”

5. The revenue's appeal to the ITAT was rejected. It is therefore in appeal before us. Learned counsel for the revenue contended that the ITAT was not justified in upholding the deletion directed by the CIT(Appeals). It was argued that the AO noted firstly that when the Board Resolution of 14.12.2003 was made, HLL was very much in control since the majority of

the Board of Directors of the assessee were nominees of HLL. Thus there was a ready acceptance of a liability for over a 12 year period. Other than debit note there was no real basis for accepting this liability and the AO was consequently justified in seeking to bring this to tax. It was submitted that likewise the deletion of ₹24.3 crores was not justified.

6. Counsel for the assessee on the other hand urged that this Court should not interfere with concurrent findings on both the issues. He submitted in addition that the Board took note of the debit note and gave effect to it by admitting a liability since there was no dispute that HLL in fact had claimed that amount. It was also emphasized that the debit note covered current period also i.e. financial year 2002-03. So far as the addition of ₹24.3 crores was concerned, the learned counsel submitted that both the CIT(Appeals) and the ITAT had noticed that the matter with respect to this liability was sub-judice and pending adjudication in the Company Court which since by its interim judgment dated 25.4.2013 in Company Petition No.5/1985 CA No.714/2006, rejected the plea made on behalf of the original promoter director of the assessee Sh. Choudhrie that the sum of ₹24.3 crores was payable. In this regard reliance was placed on the following extract of the judgment dated 25.4.2013 of the Court :

“19. It is next contended that HLL owes the Applicant arrears of conversion/processing charges to the tune of Rs. 24 crores. As pointed out in its reply HLL enhanced the conversion charges which were required to be paid only if Phase-II was implemented at the option of HLL. Consequently, this plea of the Applicant is without merit and is rejected as such.”

7. Likewise learned counsel relied upon the same order with respect to the disallowance of ₹1.52 crores. That part of the order reads as follows :

“22. It is next contended that HLL has charged an amount of Rs. 1,52,32,900 from SCL on account of salaries and wages payable to managers and supervisors stated to have been deputed to SCL’s factory for the period 1998-2002. It is submitted that the above provision was in respect of the paper unit of SCL which HLL neither ever revived nor was under any obligation to revive and not of the soap plant for which managers and supervisors were actually deputed.

23. As far as the above submission is concerned, HLL has denied charging Rs. 1,52,32,900 from SCL towards wages of the employees who were sent on deputation to SCL. It is stated that in the handing over docket, HLL had mentioned that Rs. 81,22,072 was payable to it towards balance part payment of salaries and wages of managers and supervisors on full time deputation to SCL factory. In the circumstances, the above plea of the Applicant is rejected.”

8. It is evident from the above discussion that so far as the sum of ₹1.52 crores is concerned, HLL never appears to have pressed for the arrears of wages and salaries for its employees for the period 1999-2003 to the extent claimed by the assessee on the basis of the debit note. Furthermore, large part of those amounts was in fact time-barred. That the debit note demanded ₹1.52 crores may be a matter of record.

9. Furthermore, there is no evidence on the record that at any time during the relevant period 1999-2003 provisions were ever made on the basis of any material to suspect such claims by HLL. At the same time the Court cannot ignore the circumstance that the overwhelming majority of the Board of Directors of the assessee was comprised of HLL’s nominees who could conveniently impose this law which they did. The palpable exaggeration of this claim is also evident from the fact that HLL subsequently in the year 2013 conceded that it only claimed ₹81,22,072/-,

which was payable towards the balance part of the payment of salaries of supervisors etc. In the circumstances, this Court is of the opinion that the ITAT's reasoning affirming the order of the CIT(A) is entirely without justification. The first question of law is accordingly answered in favour of the revenue and against the assessee. As far as the second aspect i.e. 24.3 crores is concerned – as stated earlier both the CIT and the ITAT took note of the fact that these amounts were disputed and were mere claims. The Company Court rejected it in its judgment dated 25.4.2013. In these circumstances, the Court finds no reason to interfere with the impugned judgment and the question of law is accordingly answered in affirmity and against the revenue.

10. For the above reasons the appeal is accordingly partly allowed.

11. Pending application is dismissed as infructuous.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

FEBRUARY 12, 2015

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