

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 30 OF 2007

Sesa Goa Ltd.

Having its office at "Sesa Ghor"

Patto, Panaji, Goa.

.... Appellant.

Versus.

Commissioner of Income Tax,

having his office at Aayakar Bhavan,

Patto – Plaza, Panaji, Goa.

..... Respondent.

Mr. R. G. Ramani, with Mr. P. Kakodkar, Advocates for the Appellant.

Ms. S. Linhares, Standing Counsel for the Respondent.

***Coram : M.S. Sonak &
Smt. M.S. Jawalkar.***

Date : 3rd February, 2020.

ORAL JUDGMENT : (Per M.S. SONAK, J.)

Heard Mr. R.G. Ramani for the Appellant-Assessee and Ms. S. Linhares, learned Standing Counsel for the Respondent-Revenue.

2. This appeal pertains to the Assessment Year 1997-98.

3. This appeal was admitted on 25th June, 2007, on the following substantial questions of law :

A) Whether on the facts and in the circumstances of the case, the receipts by way of "Shipping Agency fees" and "hire charges of machinery and installations" have to be reduced in terms of the said clause (baa); and if the said receipts have to be so reduced, whether it is the gross receipts that have to be reduced or it is the net receipts included in the profits, that have to be reduced ?

B) Whether on the facts and in the circumstances of the case, the receipts under the head "extraction charges" could be considered as part of the "total turnover" as defined in the said clause (ba), for the purpose of computation of the deduction under section 80 HHC of the Act ?

C) Whether on the facts and in the circumstances of the case, the interest received from the subsidiary companies on loans lent to them to meet their working capital requirements, and claimed by the Appellant as forming part of the income from "Profits and gains of business" could be considered as assessable as "Income from other sources"?

D) Whether on the facts and in the circumstances of the case, the receipts in the Appellant's accounts under the heads (i) proceeds of services; (ii) hire of Ship/transhippers; (iii) hire of barges; and (iv) repairs of vessels by Shipyards, which receipts have substantial costs, and arise from the main business activity of the Appellant, would have to be reduced in terms of the said clause (baa)?

E) Whether on facts and in the circumstances of the case, the demurrage payable to non-resident Ship owners/charterers of the vessels, on which tax was not

deductible as found by the Tribunal, could be considered as disallowable under section 40(a)(i)?

F) Whether on facts and in the circumstances of the case, the bad debt actually written off as irrecoverable in the accounts of the Appellant, on the basis of an authorisation by the Board of Directors at a meeting held to approve the accounts after the close of the year, could be disallowed on the ground that the writing off of such bad debt did not take place in the relevant previous year ?

G) Whether on facts and in the circumstances of the case, in computing the deducting under section 80 HHC, the interest credited in the accounts, which formed part of the bad debt written off as irrecoverable, was not to be netted off from the total interest assessed as income from "Profits and gains of business" while reducing 90% of the interest receipts in accordance with the said clause (baa) in arriving at the "profits of the business"?

4. In so far as the substantial question of law (A) is concerned, we feel that the same has to be divided into two parts :-

(i) Whether, in the facts and in the circumstances of the present case, the receipts by way of "*Shipping Agency fees*" and "*hire charges of machinery and installations*" have to be reduced in terms of the clause (baa) to Section 80 HHC ?

(ii) If the aforesaid question of law is to be answered in favour of the Respondent-Revenue and against the Appellant-Assessee, then, whether the reduction is to be of the gross receipts or the net receipts ?

5. In so far as "*hire charges of machinery and installations*" are concerned, this question has been squarely answered against the Appellant-Assessee and in favour of the Respondent-Revenue in Tax Appeal No.53/2006 decided on 7th May, 2005. Incidentally, this was also an appeal instituted by this very Appellant in relation to the Assessment Year 1996-97. Applying the reasoning therein, it will, therefore, have to be held that the hire charges of machinery and installations will have to be reduced in terms of clause (baa) to Section 80 HHC.

6. In so far as shipping agency fees are concerned, again, we note that for the previous assessment year, as also for the assessment year with which we are concerned in the present Appeal, the fact finding authorities have held that the shipping agency fees have no nexus as such with the export and, therefore, reduction of even these receipts is warranted in terms of the explanation (baa) to Section 80 HHC. Since this appeal is on substantial question of law and further, since no perversity as such has been pointed out in the findings of fact recorded by the fact finding authorities, we hold that even shipping agency fees are required to be reduced from the profits in terms of clause (baa) to Section 80 HHC.

7. Accordingly, in so far as the first part of the substantial

question of law (A) is concerned, we hold that the receipts by way of shipping agency fees and the hire charges of machinery and installations will have to be reduced from the profits in terms of the explanation clause (baa) to Section 80 HHC. In short, this part of the substantial question of law will have to be answered in favour of the Respondent-Revenue and against the Appellant-Assessee.

8. In so far as the second part of the substantial question of law (A) is concerned, according to us, this is covered by the decision of the Hon'ble Supreme Court in *ACG Associated Capsule (P) Ltd. vs. Commissioner of Income-tax*¹. In fact, this decision was followed by us in the *Commissioner of Income Tax vs. Sesa Goa Ltd.*, Tax Appeal No. 81/2006 decided on 7th May, 2015 and thereafter, in *V.M. Salgaoncar & Brother Private Limited vs. Commissioner of Income Tax*, Tax Appeal No. 21 of 2011, decided on 22nd November, 2019. In terms of these rulings, reduction has to be made not on gross basis, but on net basis only. Accordingly, we hold that though the receipts by way of shipping agency fees and higher charges for machinery and installation will have to be reduced in terms of explanation (baa) to Section 80 HHC, such receipts will have to be computed on net basis and not on gross basis. Accordingly, the reduction will also have to be effected only on net basis and not on gross basis. This part of the substantial question of law (A) will,

¹ (2012) 18 Taxman.com 137 (SC)

therefore, have to be answered in favour of the Appellant-Assessee and against the Respondent-Revenue.

9. Accordingly, we answer the substantial question of law at (A) by holding that the receipts by way of shipping agency fees and the higher charges of machinery and installation will have to be reduced in terms of the explanation (baa) to Section 80 HHC of the Income Tax Act. However, such reduction will have to be on net basis and not on gross basis.

10. In so far as substantial question of law (B) is concerned, the same is directly covered against the Appellant-Assessee and in favour of the Respondent-Revenue in *Sesa Goa Ltd. vs. The Commissioner of Income Tax*². Accordingly, this substantial question of law is decided against the Appellant-Assessee and in favour of the Respondent-Revenue.

11. In so far as substantial question of law (C) is concerned, this issue is covered in favour of the Appellant-Assessee and against the Respondent-Revenue in *Principal Commissioner of Income Tax vs. Sesa Resources Ltd.*³ and in the *Commissioner of Income Tax vs. V.S. Dempo & Co. Pvt. Ltd.*⁴. Accordingly, the substantial question

² Tax Appeal No.53/2006 decided on 7/5/2015

³ Tax Appeal No. 57 of 2016 decided on 16/8/2017

⁴ Tax Appeal No.58 of 2007 decided on 20/7/2019

of law (C) is answered in favour of the Appellant-Assessee and against the Respondent-Revenue.

12. In so far as the substantial question of law (D) is concerned, we have to again fall back upon the decision of this Court in *Sesa Goa Ltd.* (supra). In the said decision, this Court has held that in so far as hire of ship/transhipper and hire of barges is concerned, receipts are covered under the explanation (baa) to Section 80 HHC and, therefore, such receipts will have to be reduced from out of the profits. To that extent, this substantial question of law will have to be answered against the Appellant-Assessee and in favour of the Respondent-Revenue.

13. However, when it comes to proceeds of services and repairs of vessels by shipyards, it is held in *Sesa Goa Ltd.* (supra) that such receipts will not be covered under the explanation (baa) to Section 80 HHC and, therefore, there is no question of reduction of such receipts from out of the profits. To that extent, therefore, this substantial question of law will have to be answered in favour of the Appellant-Assessee and against the Respondent-Revenue. The substantial question of law (D) is, therefore answered by holding that the receipts towards hire of ships/transhippers and hire charges of barges will have to be reduced in terms of the explanation (baa) to Section 80 HHC. However, the receipts towards proceeds of

services and repairs of vessels by shipyards have not been covered under the explanation (baa) to Section 80 HHC, will have to be reduced from out of the profits. Further, we add that in matters of such reductions, the computation will have to be on net basis and not on gross basis.

14. In so far as the substantial question of law (E) is concerned, the same is covered in favour of the Appellant-Assessee and against the Respondent-Revenue in the decision of the Full Bench of this Court in the *Commissioner of Income Tax vs. V.S. Dempo & Co. Pvt. Ltd.*⁵. Incidentally, three of the connected Appeals i.e. Tax Appeals No. 948/2015, 957/2015 and 978 of 2015 were the Appeals instituted by this very Appellant-Assessee. Accordingly, the substantial question of law (E) is answered in favour of the Appellant-Assessee and against the Respondent-Revenue.

15. In so far as the substantial question of law (F) is concerned, the same is again covered in favour of the Appellant-Assessee and against the Respondent-Revenue in the following decisions :

(i) *T.R.F. Limited vs. Commissioner of Income Tax, Ranchi*⁶;

⁵ Income Tax Appeal No. 989/2015 and other connected Appeals decided on 5/2/2016.

⁶ Civil Appeal No.5293/2003 decided on 9/2/2010

(ii) *Kerala State Industrial Development Corporation Ltd. vs. CIT*⁷

(iii) *CIT Poona vs. R.B. Rungta & Co.*⁸

Accordingly, the substantial question of law (F) is answered in favour of the Appellant-Assessee and against the Respondent-Revenue.

16. Mr. Ramani, the learned Counsel for the Appellant quite correctly submits that in view of the decision on the substantial question of law (F), any decision on the substantial question of law (G) becomes redundant. Accordingly, the substantial question of law (G) is not required to be answered in the present Appeal.

17. This Appeal is, accordingly, disposed of in the aforesaid terms. There shall be no order as to costs.

Smt. M.S. Jawalkar, J.

M.S. Sonak, J.

⁷ 349 ITR 365

⁸ 349 ITR 250 (Bom.)