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GA No. 542/2015
In
ITAT 37 of 2015

IN THE HIGH COURT AT CALCUTTA

SPECIAL JURISDICTION (INCOME TAX)

COMMISSIONER OF INCOME TAX, KOLKATA-III, KOLKATA

Versus

AMBO AGRO PRODUCTS PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE ABHIJIT GANGOPADHYAY

Date : 20th June, 2018.

Mr. S.N.Dutta,Advocate appears.

Mr. J.P.Khaitan,Sr. Advocate appears.
Mr. Agnibesh Sengupta,Advocate appears.
Ms. Mudrika Khaitan,Advocate appears.

The Court :- The Revenue seeks to assail an order of the Appellate Tribunal of May 8, 2014 pertaining to two aspects thereof: the ground of speculative transaction as raised by the assessing officer and upheld by the Dispute Resolution Panel: and, the date which has to be reckoned for the purpose of determining the arm's length price in a contract with an associate concern.

As far as the second issue is concerned, not much has been said on behalf of the Revenue, particularly since the Dispute Resolution Panel accepted the assessee's contention that it is the rate indicated in the contract which has to be compared to the rate prevailing on the date of the contract rather than the rate prevailing when the invoice is raised. The Appellate Tribunal has merely endorsed the view taken by the DRP. Since it is a possible view taken after considerable deliberation and justified with reasons, the Appellate Tribunal's endorsement of such view of the DRP does not call for any reconsideration.

As far as the speculation transaction aspect is concerned, it appears that the assessee did not honour its commitment to take delivery against some purchase orders placed on foreign sellers consequent upon the price of palm oil declining. The assessee, however, accepted the foreign sellers' claims for damages and settled the matter and claimed the same as a loss.

There were several transactions which the Assessing Officer referred to as speculative transactions within the meaning of the relevant expression in Section 43(5) of the Income Tax Act, 1961. The Appellate Tribunal noticed that the international price of crude palm oil and related products had declined during the relevant year and the same affected the Indian market. The Appellate Tribunal also found that the assessee wanted to guard against further loss by not taking delivery of the palm oil that had been ordered but by accepting the claims for damages upon the cancellation of the contracts.

The Appellate Tribunal referred to Section 43(5) of the Act and the judgments of several High Courts, including one of Delhi reported at 247 ITR 79.

In that case, in similar circumstances, the assessee had not taken delivery of a consignment of sugar and the assessee suffered damages as a consequence thereof. The Appellate Tribunal in the present case relied on the reasoning in the Delhi judgement that what the assessee had done was to act in derogation of the terms of the relevant contract or commit a breach thereof as a consequence whereof it was liable to pay damages.

Even if a party in breach accepts the claim for damages that the other party to the contract may put forward, what actually happens is the disposal of a dispute and not any settlement of the kind that is envisaged by the word "settled" used in Section 43(5) of the Act. Since the Appellate Tribunal relied on a legal proposition that has held the field for a considerable period, the order impugned does not warrant any interference on such score.

ITAT No. 37 of 2015 and GA No. 542 of 2015 are disposed of.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(ABHIJIT GANGOPADHYAY,J.)

S.Chandra