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

INCOME TAX APPEAL NO.1723 OF 2016

Pr. Commissioner of Income Tax-5
Mumbai .. Appellant
Versus
M/s. Jindal Steel & Alloys Ltd. .. Respondents

Mr. Sham Walve for appellant
Mr. Hiro Rai with Subhash Shetty for respondents.

CORAM : AKIL KURESHI &
M.S.SANKLECHA, JJ.

DATE : 20th February 2019.

P.C.

Taken up for final disposal with the consent of learned Advocates for parties.

2] The appeal is filed by the Revenue to challenge the judgement of Income Tax Appellate Tribunal (Tribunal for short). Following questions are presented for our consideration :-

> (A) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in law in holding that the valuation report obtained by the buyer of the CRM division could at best be taken to be for the purpose of reaching a

board enterprise value by the buyer and could not be construed as assigning of sale values to the individual assets and liabilities as understood for the purpose of section 2(42C) of the Income Tax Act, 1961?

(C) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in law in holding that the CRM division stood sold from the effective date of 31/5/2007 mentioned in the agreement and not from the date of 4/9/2007 being the date of registration of the deed of transfer dated 11th June 2007?

(E) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in deleting the disallowance under section 14A read with Rule 8D made by the Assessing Officer on the ground that the assessee had not earned any exempt income during the year when the assessee had made investments which were capable of yielding exempt income?

3] The respondent assessee is registered company. This appeal arises out of assessment year 2008-09. The first question raised by the Revenue pertains to conclusions of the Tribunal that the assessee had sold its CRM division to one JSW Limited, by way of slump sale. Before the Tribunal the revenue contended that the valuation of the division under sale made by the valuer was on the basis of segregated valuation of individual assets. The revenue, therefore, contended that the sale in question cannot be treated as slump sale. The Tribunal, however, held that the sale in question

was slump sale, finding the fact that the assets and liabilities of the CRM division involved tangible as well as intangible were transferred to JSW as a going concern. The Tribunal noted that section 2(42C) of the Act, defines expression “slump sale” as to mean transfer of one or more undertakings as a result of sale for lumpsum consideration without values being assigned to the individual assets and liability in such sales. The Tribunal noted the terms of agreement between the assessee and the purchaser of the said unit in which the expression "Unit" for the purpose of deed of transfer was defined as to mean "all the tangible and intangible assets and liabilities of the entire unit".

4] In view of the above position, we do not find that the Tribunal has committed any error. The sale in question was correctly held to be a slump sale as defined in section 2(42C) of the Act. Merely because for the purpose of arriving at a proper valuation for transfer of the entire unit in the valuation report obtained by the purchaser, the valuer assigned separate valuation to different parts of the unit would not take away the fact that what was sold by the assessee was entire unit as a going concern. No question of law, therefore, arises.

5] The second question raised by the Revenue relates to the effective date of sale of this unit. The assessee contended all through out that the effective date of sale was 31st May 2007. The agreement was executed between the parties on 11th June 2007 and was actually registered on 4th September 2007. The revenue contends that the sale would be effective from 4th September 2007. This question becomes relevant since the unit in question was already in possession of JSW which was operating the unit upon payment of conducting charges of Rs.50 lakhs per month to the assessee. On this account, the assessee stopped crediting such sum after 31st May 2007 contending that the unit stood transferred from such date to JSW and, therefore, the assessee no longer had any right to receive the conducting charges from JSW Ltd.

6] The A.O. took the date of registration of the deed of transfer as the effective date on which the unit stood transferred to the purchaser. In appeal the CIT (Appeal) gave partial relief holding that transfer was effected on 25th June 2017 on the basis that the payment for sale was received on that date. We are informed that the payment was made on 11th June 2017 but actually credited in

the assessee's account on 25th June 2017. The Tribunal gave full relief to the assessee holding that the unit stood transferred on 31st May 2007. The Tribunal noted that the agreement refers to the date of 31st May 2007 as effective date of transfer of unit. Both sides have interpreted such agreement in this manner. It was, thereafter, not possible for A.O. to shift the effective date of transfer.

7] We do not find that the Tribunal has committed any error. The agreement in question referred to the effective date of transfer as 31st May 2007. The Tribunal records that written agreement which was executed a couple of months later and was registered some time thereafter, would not make any difference. The issue can be looked from slightly different angle. The date assessee stopped claiming income arising out of conducting charges of the said unit after 31st May 2007, surely the purchaser JSW would also have stopped claiming expenditure towards such charges. If both sides have accordingly acted in terms of clear understanding, the revenue authority had no reason or even power to shift such date. That too, in case of only one party i.e. the recipient of the income.

8] This brings us to the sole surviving question of

disallowance of expenditure made in terms of section 14A of the Act read with Rule 8D of the Income Tax Rules. The Tribunal deleted the additions made by the AO and confirmed the order of the CIT on the ground that the assessee had during the relevant period under consideration not earned any exempt income. The Tribunal in that view of the matter referred to and relied upon the decision of Gujarat High Court in the case of CIT Vs. Corrtech Energy Pvt. Ltd. (2014) Taxman 130(Guj) and deleted the additions made by A.O.

9] We notice that before the A.O. the assessee has not raised such contention. We are informed that before CIT (Appeal) such a contention was raised. However, the same was not dealt with. The Tribunal has merely made one line declaration that the assessee had not earned any exempt income. We do not find any reasons for for refraction of the Tribunal's examination on the accounts of the assessee before coming to such a conclusion.

10] Under the circumstances, we would request the Tribunal to re-examine this question and give a fresh finding with brief reasons. We are not disputing the Tribunal's conclusion that if the assessee had not earned any exempt income disallowance under

section 14A read with Rule 8D could not have been done. This is what this Court in a judgement dated 30th January 2019 in Income Tax Appeal No.1619 OF 2016 in case of The Pr. Commissioner of Income Tax Vs. Huntsman International (India) Pvt. Ltd. has held. For this limited issue the appeal is restored to the file of Tribunal. With these observations the appeal is disposed of.

(M.S.SANKLECHA, J.) (AKIL KURESHI, J)