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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1241 of 2008

The Commissioner of Income Tax-23)  
Pratyakshakar Bhavan, BKC, )  
C-10, Room No.302, 3rd Floor, )  
Bandra \*(East), Mumbai-51. )..Appellant

Vs.

M/s.Polycott Corporation )  
1801/02, Takshashila, Nirmal )  
Nagar, Link Road, Mulund, )  
Mumbai-80 )..Respondent

Mr. Atul Ahuja with Mr. P.S. Sahadevan, for the  
Appellant.  
Mr.S.G. Dalal, for Respondent.

**CORAM: F.I. REBELLO &  
R.S.MOHITE, JJ.  
DATED: 23rd January, 2009**

**JUDGMENT (PER F.I. REBELLO, J):**

. The Revenue has preferred this Appeal on  
the following question:-

"(A) Whether on the facts on in the  
circumstances of the case and law, the  
Hon'ble I.T.A.T. is right in directing the  
A.O. to compute the deduction under Section  
80HHC of the Act after the books of accounts  
having been closed/made up with the total  
export turnover ascertained, holding that  
the reduction in the invoice amount having  
been approved by the R.B.I., the original

sales price stands modified to this extent and such modified price only should be included as part of export turnover?."

2. Before answering the question, it is necessary to consider the contentions raised on behalf of the Respondent that if the the tax does not exceed Rs.4.00 lakhs the Appeal ought not to have been filed.

3. On the other hand on behalf of the Revenue the learned Counsel relies on the C.B.D.T. instruction No.05/2008 dated 15th May, 2008. Section 268A has been introduced in the Income Tax Act by Finance Act, 2008. Pursuant to the said provision an instruction has been issued in supersession of all other earlier instructions. In so far as the High Court is concerned Appeal can also be filed when the tax effect exceeds the monetary limit of Rs.4.00 lakhs. Para.4 defines "tax effect" to mean the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issue against which appeal is intended to be filed. It is not necessary to refer to the other paras of the instructions. What is relevant for our discussion is para.5 which reads as under:-

"The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal shall be filed, in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para.3. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para.3. In other words, henceforth, appeals will be filed only with reference to the tax effect in the relevant assessment year."

4. Para.5 can be read in the following manner:-

(1) The Assessing Officer shall calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee.

(2) If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal shall be filed, in

respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para.3.

(3) No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified in para.3.

(4) In other words, henceforth, appeals will be filed only with reference to the tax effect in the relevant assessment year.

5. It would be clear from the above that if in the case of an assessee if the disputed issues arise in more than one assessment year, appeals are to be filed only in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the monetary limit specified in para.3. In other words even if in respect of the same issue in respect of the same assessee for other assessment years the monetary limit is not more than Rs.4.00 lakhs appeal need not be filed. Para.6 makes it clear that in such a case if an appeal is not filed there will be no presumption that the Income-Tax Department has acquiesced in the decision on the disputed issues.

6. What is, however, relevant is part (3) of para.5 which we have separately set out. This instruction is issued pursuant to the power conferred under Section 268A of the Income Tax Act. Bearing the principle of the provision in the mind and the object behind the issuance of the instructions it would be clear that if there is a composite order which involves more than one year, then if in respect of any one year in which the tax effect exceeds the monetary limit prescribed and it is decided to file an appeal, then appeal shall be filed in respect of all the assessment years, even in those cases where the tax effect is less than the monetary limit prescribed.

7. On behalf of the Revenue learned Counsel sought to contend before us that the expression "composite" is distinct from the expression "common" and for that purpose he sought to rely on Dictionary meaning of the word "composite" with Reference to Dictionary meaning from P . Ramanatha Aiyar Concise Law Dictionary, 1997 Edition.

8. On the other hand on behalf of the assessee learned Counsel submits that filing of an appeal is referable to the issues. In other words if in respect of an appeal which is to be filed where the

monetary limit exceeds Rs.4.00 lakhs then in respect of the other years where the monetary effect is less the issue involved must be the same. Otherwise no appeal can be preferred.

9. Having considered the contentions, in our opinion, the instructions cannot be interpreted as a Statute though it is pursuant to the power conferred under Section 268-A of the Income Tax Act. What the Court has to consider is the plain language of the paragraph and the object behind the said provisions. The object appears to be not to burden courts and Tribunals in respect of matters where the tax effect is less than the limit prescribed. Even before this instruction CBTD has been issuing instruction, the last one being on 24th October, 2005 where the monetary limit has been fixed. In those instructions the only exception had been that in cases involving substantial question of law of importance as well as in cases where the same question of law will repeatedly arise, either in the case concerned or in similar case, appeal should be filed without being hindered by the monetary limits. The present instructions seems even to limit the issues in so far as the same question of law or recurring issue except to the extent provided in para.5.

. On a proper reading of para.5 of the instructions it would be clear that a duty is cast on the Assessing Officer that even if the disputed questions arise for more than one assessment year then an appeal should be filed only in respect of those years where the monetary limit as specified in para.3 of the instructions. The exception, however, is carved out in respect of a composite order of the High Court or appellate authority. In other words where the High Court or Tribunal has passed a composite order in respect of the same assessee on the same question and/or on different question and for one of the assessment years, the tax effect is more than the monetary limit then the appeal shall also be filed in respect of all the assessment years. The submission on behalf of the assessee is that the composite order must relate to a common issue. We beg to disagree on a plain and literal construction of the instruction. The expression "which involves more than one year" would have no meaning if it was restricted only to the expression "common issues". The expression, therefore, of a composite order will have to be read to mean an order in respect of the same assessee for more than one year. An disposing of several appeals on a common question of law by appellate authority, cannot be said to be a composite order as the order involves appeals by different persons, which appeals

for the sake of convenience have been only clubbed together for the purpose of disposal on that issue. In our opinion, this would be the correct reading of para.5 of the instruction.

10. Having said so and as we have heard the parties on merits we do not propose to dispose of the appeal based on the instructions but dispose it of on merits.

11. To avail of the benefit of Section 80HHC the proceeds have to be brought into India within the time prescribed i.e. six months or such extended period as may be allowed. In the instant case the R.B.I. granted time upto 30th June, 2001. The proceeds were brought into India on 30th June, 2001. Here we may set out the areas of disagreement between the revenue and assessee. It is the contention of the assessee that while working out total turn over what will have to be considered is the revenue which has been brought in during the course of that financial year and if any moneys in respect of export proceeds has come subsequent to the order of assessment, they will have to be considered during the said financial year. The other factual aspect of the matter is that the buyer proposed deduction in the export price, the Respondents agreed to the same after taking approval



of the R.B.I. to the extent of 30% The Respondents are a totally export oriented unit. Moneys, therefore, in terms of the approval granted by R.B.I. were brought in during the period as extended. The Tribunal in its order observed that once R.B.I. has agreed to deduction in the Invoice amount the original sales price stands modified and such modified price only should be taken as actual export value. It is further observed that such adjusted export value should only be included in the export turnover and the total turnover. The contention on behalf of the Revenue was that, that should be excluded from the export turn over. In our opinion, considering the facts and the provisions of Section 80HHC we cannot find fault with the conclusion arrived at by the learned Tribunal.

12. In the light of that the question answered in the affirmative in favour of the assessee and against the Revenue.

(R.S.MOHITE, J.)

(F.I.REBELLO, J.)