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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.188 OF 2011

The Commissioner of Income Tax-2,
Mumbai

...Appellant

Versus

Raymond Ltd.

...Respondent

Mr.Vimal Gupta for appellant.

Mr.Percy J. Pardiwala, Senior Advocate with Mr.Mohan Salian,
Ms.Vaijayanta Shete and Mr.Jainuddin Khan i/b. Gagrats for respondents.

CORAM: DR.D.Y. CHANDRACHUD &
M.S.SANKLECHA, JJ.

March 20, 2012.

ORAL JUDGMENT (PER DR.D.Y.CHANDRACHUD,J.)

1. This appeal by the Revenue is against an order of the Income Tax Appellate Tribunal dated 22 March 2007; the Assessment Year to which appeal relates being AY 1992-93. The following substantial questions of law are raised:

(A) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in deleting disallowance of foreign expenses incurred on the relatives of the Directors;

(B) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in deleting disallowance of pre-operative expenses even though the said expenditure which pertains to establishment of textile and files division is capital in nature;

(C) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in reversing the order of CIT(A) and allowing the set off of short term capital loss against short term capital gain arising on sale of debentures and units;

(D) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in reversing the order of CIT(A) by allowing deduction under Section 80M without adjusting the loss on sale of shares;

(E) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in allowing the actual premium paid on redemption of debentures as revenue expenditure;

(F) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in deleting the addition in value of inventory made by A.O.;

(G) Whether on the facts and in the circumstances of the case and in law, the ITAT is right in deleting the addition made in value of goods in process by AO;

2. The Appeal is admitted on questions A, E, F and G. By consent the appeal is taken up for hearing and final disposal.

3. As regards Question A, counsel appearing on behalf of the Revenue and counsel appearing on behalf of the assessee are agreed that this question would have to be answered in favour of the Revenue and against the assessee in view of the judgment delivered today in companion Income Tax Appeal No.1276 of 2009 pertaining to AY 1991-92. In view of this statement, Question A is answered in the negative and in favour of the Revenue.

4. As regards Question B, it is common ground between counsel appearing on behalf of the Revenue and counsel appearing on behalf of the assessee that the said question would stand covered in favour of the assessee by the judgment delivered by this Court today in companion Income Tax Appeal No.189 of 2011 pertaining to Assessment Year to 1990-91. For the reasons already indicated by the Court while disposing of the companion appeal, this question will not raise any substantial

question of law.

5. As regards Questions C and D, it is agreed between the counsel appearing on behalf of the Revenue and the counsel appearing on behalf of the assessee that the same are covered by the judgment of the Supreme Court in **Commissioner of Income Tax Vs. Wallfort Share and Stock P. Ltd.**¹ in favour of the assessee and against the Revenue. Hence these questions would not give rise to any substantial question of law.

6. Question E is now taken up for consideration. The assessee had issued Non Convertible Debentures during the year ending on 31 March 1985. In the previous year relevant to Assessment Year 1992-93 the assessee repaid an amount of Rs.450 lakhs, at a premium of Rs.15 lakhs on account of the Non Convertible Debentures. The Assessing Officer took the view that the premium which was paid related to Capital Repayment and could not be allowed as revenue expenditure. The CIT (A) held in favour of the assessee relying upon his order for AY 1991-92 which in turn was based on the judgment of the Calcutta High Court in **Commissioner of Income Tax Vs. Tungbhadra Industries Ltd.**² The CIT(A) directed the Assessing Officer to allow the deduction for premium actually paid during the previous year provided that no part of the said premium has been allowed as a deduction on a pro rata basis in the earlier years. In appeal, the Tribunal noted that the Non Convertible Debentures which were issued in the amount of Rs.300 lakhs during the year ending

1. 2010 326 ITR 1 (SC)

2. (1994) 207 ITR 553

31 March 1985 were to be repaid after seven years of allotment on 9 February 1992 at a premium of 5 per cent. The assessee paid the entire amount due on the redemption of the Debentures along with the premium in the previous year relevant to AY 1992-93 and claimed a deduction for the payment made of Rs.15 lakhs. The Tribunal followed the decision of the Calcutta High Court in **Tungabhadra Industries** and accepted the claim of the assessee.

7. In the decision of the Supreme Court in **Madras Industrial Investment Corporation Ltd. Vs. Commission of Income Tax**³ the assessee had made a public issue of debentures. The debentures were issued at a discount of 2 per cent and were redeemable after twelve years. The total discount on the issue of Rs.1.5 crores amounted to Rs.3 lakhs. For Assessment Year 1968-69 the assessee wrote off Rs.12500 out of a total discount of Rs.3 lakhs, being the proportionate amount of the discount. The Assessing Officer disallowed the claim of the appellant on the ground that the discount on the debentures was not allowable as expenditure. The AAC however, upheld the claim for deduction of Rs. 12,500/-. The Tribunal held that the expenditure of Rs.3 lakhs was incurred during the relevant previous year although it was proportionately written off over a period of twelve years. The Tribunal allowed the entire deduction in the amount of Rs.2,87,500/-. Among the questions which were referred to the High Court for decision, was whether the Tribunal was justified in holding that the assessee had incurred an expenditure of Rs.3 lakhs, by way of discount paid to the persons who had subscribed to

3. (1997) 225 ITR 802

the debentures, during the relevant previous year and whether the same was allowable as revenue expenditure. The High Court held that the discount of Rs.3 lakhs did not represent any payment made to anyone so as to constitute expenditure. The High Court held that of the total discount of Rs.3 lakhs, a discount of Rs.12,500/- had been allowed by the Tribunal which the Department had not challenged. The High Court held that the balance of Rs.2,87,500/- could not be considered as expenditure.

8. In appeal, the Supreme Court noted that the assessee had actually received an amount of Rs.1.47 crores against which it had incurred a liability to pay an amount of Rs.1.50 crores with interest at the end of 12 years, the date of redemption. This liability which the assessee incurred, to pay an amount of Rs.3 lakhs in addition to what it had actually received was being written off by the assessee over a period of twelve years. The Supreme Court held that when the assessee had issued debentures at a discount, it had incurred a liability to pay a larger amount than what it had borrowed, at a future date. The Court held that the liability to pay the discounted amount over and above the amount received for the debentures is a liability which has been incurred by the company for the purpose of its business in order to generate funds for its business activities. The amounts so obtained by issue of debentures were used by the assessee for the purpose of its business and was, therefore, held to constitute expenditure.

9. In the present case the assessee issued Non Convertible Debentures in the Financial Year ending on 31 March 1985, which were liable to be

redeemed in Financial Year 1991-92 at a premium of Rs.15 lakhs. The amount which was expended by the assessee towards the premium of Rs. 15 lakhs is, properly construed, a liability which the assessee incurred for the purpose of its business in order to obtain the use of the funds for the period covered by the issue of Non Convertible Debentures. The payment of a premium at the end of the term which is fixed for the Non Convertible Debentures and upon which the debentures are to be redeemed is the flip side of a situation where the assessee issues debentures at a discount. In the case of a discount, the assessee has the benefit of the funds which are realised from the issue of the debentures, over the term of the debentures. In the case of a premium which the assessee pays, the premium paid on the date fixed for redemption is in consideration of the use of the funds by the assessee until such date as the debentures fall due for redemption. The principle which has been laid down by the Supreme Court in **Madras Industrial Investment Corporation Ltd.** to hold that the additional liability equivalent to a discount represents revenue expenditure must, by analogy of reasoning, apply to the premium which is paid by the assessee at the time of redemption of the debentures. In that view of the matter, the question which has been framed by the Revenue would have to be answered in the affirmative, in favour of the assessee. The actual premium paid upon the redemption of the debentures would have to be classified as revenue expenditure, in terms of the decision of the Supreme Court in **Madras Industrial Investment Corporation Ltd.**

10. As regards Questions F and G, this Court in its decision rendered

today in companion Income Tax Appeal No.189 of 2011 has restored the grounds in question for a decision afresh by the Tribunal on the finding that there was no independent application of mind by the Tribunal. Save and except for adverting to the findings of the CIT(A), the Tribunal having failed to independently evaluate the issues, this Court has restored the grounds in question for a decision by the Tribunal afresh. Accordingly Questions F and G would stand governed in terms of the decision rendered by the Court in companion Income Tax Appeal No.189 of 2011. The appeal shall stand accordingly disposed of. There shall be no order as to costs.

(DR.D.Y. CHANDRACHUD,J.)

(M.S.SANKLECHA, J.)



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