IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 325/2013

COMMISSIONER OF INOCME TAX: DELHI-V..... Appellant

Through Mr. Abhishek Maratha, Sr. Standing Counsel.

versus

R.T.PAPER BOARD ..... Respondent

Through Mr. Arvind Kumar, Mr. Ashutosh Rastogi, Mr. C.S. Chauhan and Ms. Henna George, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

O R D E R

26.08.2013

Revenue by this appeal under Section 260A of the Income Tax Act, 1961 impugns findings of the Income Tax Appellate Tribunal that the Assessing Officer had wrongly invoked Section 154 of the aforesaid Act. The appeal relates to assessment year 2004-05.

2. Return filed by the respondent-assessee for the said year was made subject matter of regular assessment and the returned income of

Rs.8,42,64,680/- was reduced to loss of Rs. 4,91,41,878/- and unabsorbed depreciation was computed at Rs.3,51,22,800/-.

3. Later on, vide order dated 7th August, 2008 under Section 154, the Assessing Officer held that Rs.1,94,51,222/- should be added back as the assessee had wrongly claimed the aforesaid amount under Section 43B of the Act. He made reference to the audit report in which it was stated as under:-

?The assessee had claimed deduction of Rs.1,94,51,222/- as allowance of 43B of earlier years in the 3CD report the amount was shown as interest paid being the amount waived off in terms of restructuring proposal sanctioned by CDR Cell.?

4. The assessee has succeeded before the first appellate authority and the tribunal on the two grounds and this order dated 7th August, 2008, has been set aside. Firstly, the Assessing Officer had not complied with the principles of natural justice as he had earlier issued notice dated 18th March, 2008 for hearing fixed on 25th March, 2008, but the hearing on the said date was adjourned at the request of the respondent. Thereafter, no fresh date of hearing was fixed and order dated 7th August, 2008 was passed. The second reason given by the CIT (Appeals) and the tribunal is that addition under Section 154 was beyond the scope of the said section. The issue was debateable and was not covered within the four corners of the Section 154. It is not the case of the Revenue that the deduction or claim of the respondent-assessee is covered by any decision of Delhi High Court or the Supreme Court. The assessee might not be correct in making the claim but the claim could be disallowed under Section 154 of the Act, if the mistake was apparent from the record and it was not capable of two views. Debateable and contestable claims cannot be made subject matter of rectification under Section 154.

5. Learned counsel for the respondent-assessee, who has appeared on advance notice, has drawn our attention to the order passed by the CIT (Appeals), wherein he has recorded the contention of the respondent-assessee. It stated that Rs.1,94,51,222/- in the earlier assessment year i.e., 2003-04, was shown as expense in the profit and loss account, but it was added back in the tax computation sheet. As there was error in the profit and loss account of the last assessment year, i.e. 2003-04, as the amount was treated/shown as an expenditure, a reverse entry was made in the profit and loss account of the current assessment year i.e. 2004-05. The assessee has not claimed this amount of Rs.1,94,51,222/- as a deduction or expense. The said contention is duly recorded in the order of the CIT (Appeals).

6. The appeal has no merit and is dismissed.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

AUGUST 26, 2013

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