



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 12.05.2010

+ **ITA 675/2010**

COMMISSIONER OF INCOME TAX Appellant

- versus -

RANBAXY HOLDINGS COMPANY Respondent

Advocates who appeared in this case:-

For the Appellant : Ms Rashmi Chopra

For the Respondent : Mr Ajay Vohra with Ms Kavita Jha

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The order dated 15.05.2009 passed by the Income Tax Appellate Tribunal in ITA 2062/Del/2002 relating to the assessment year 1998-1999 is assailed by the revenue before us by way of this appeal.

2. The facts of the case are that the assessee had filed a return of income wherein it was shown that in the year in question the assessee company had disposed of 75,600 equity shares of Ranbaxy Laboratories Limited (RLL). The actual cost of the shares sold was Rs 1,10,57,400/- and this figure was used for the purposes of computing capital gains under Section 48 of the Income Tax Act, 1961 (hereinafter referred to as 'the said



Accounting Standard-13 and took the average cost of Rs 40,78,693/- as the cost price of these shares. The Assessing Officer issued a notice under Section 154 proposing to rectify the purported mistake in the intimation issued under Section 143(1)(a) of the said Act. The so-called mistake, which was sought to be rectified, was that as per the balance sheet, the value of the shares was shown at Rs 40,78,693/- whereas the cost price of the shares of RLL was taken at Rs 1,10,57,400/- for the purposes of computation of capital gains. According to the Assessing Officer, the value of the shares was overstated in the balance sheet by Rs 69,78,707/- and the Assessing Officer required the assessee to indicate as to why the said amount should not be added to the returned income. Thereafter, in the order passed under Section 154/143(1)(a) of the said Act, the Assessing Officer made the aforesaid addition which was confirmed by the Commissioner of Income Tax (Appeals).

3. The question before the Tribunal was whether the adjustment made by the Assessing Officer in the returned income was a debatable issue relating to the computation of capital gains and cost of the shares sold by the assessee as indicated in the return of the income filed by the assessee. The Tribunal came to the following conclusion with regard to the question of rectification of the intimation under Section 143(1)(a):-

“19. For the purpose of determining the cost of acquisition of shares sold for the purpose of computing capital gain, and cost of remaining shares to be carried forward, whether the average cost of total shares held by the assessee or actual cost of the shares sold should be taken into the account is a matter which can be decided only after



stretch of imagination, be made a subject matter of prima facie adjustment within the meaning of Section 143(1)(a) of the Act. In case of the A.O. proposed to make any addition on account of value of shares as per in the balance sheet, the A. O. should have issued a notice to the assessee giving him an opportunity to have its say and then to decide the matter in accordance with the provisions of law contained in that behalf instead of making the addition by way of rectification order made u/S 154 of the Act rectifying the intimation issued u/S 143(1)(a) of the Act.”

4. We agree with the conclusions arrived at by the Tribunal that this was a matter which could not have been adjusted under Section 143(1)(a) and certainly not a matter which could have been rectified under Section 154 of the said Act. We also note that the Assessing Officer as well as the Commissioner of Income Tax (Appeals) were confused by the two systems which were in operation. One was the manner in which the assessee was keeping his books in accordance with Accounting Standard-13 and other was the manner of computation of capital gains under the income tax regime. Insofar as the assessee following the Accounting Standard-13 is concerned, the learned counsel for the revenue could not point out any deficiency in the following of such standard as reflected from the books of the assessee company. The learned counsel for the revenue could not also point out any deficiency in the computation of the capital gains under the said Act. What the assessee has done is to identify the 75,600 shares sold in the year in question and has taken the actual cost of these shares as Rs 1,10,57,400/- and indexed it and thereafter reduced the indexed cost from the actual sale price of the shares to arrive at the capital gains of Rs 2,40,11,001/-. This method was not the correct method of computing capital gains under the said Act.



and, therefore, there can be no grievance on the part of the revenue inasmuch as the capital gains has been correctly computed and tax thereon has been paid.

5. We see no reason to interfere with the order passed by the Income Tax Appellate Tribunal in deleting the addition made by the Assessing Officer and the Commissioner of Income Tax (Appeals). The appeal is dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

May 12, 2010
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