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IN THE HIGH COURT OF DELHI AT NEW DELHI

{ITA No.481 of 2009}

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Judgment Delivered On: August 19,2010

DABUR INDIA LTD.

... APPELLANT

Through:

Mr. Pankaj Jain, Advocate with
Mr. Abhajay Jain, Advocate

VERSUS

COMMISSIONER OF INCOME TAX

...RESPONDENT

Through:

Mr. Sanjeev Sabharwal, Advocate

CORAM:-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (ORAL)

1. The assessee had filed return for the assessment year 1999-2000 on 30th December, 1999 showing as 'Nil' income and income at Rs. 48,00,408/- as per computation on the basis of books profit under Section 115JA of the Income Tax Act (hereinafter referred to as 'the Act'). This return was processed under Section 143 (1) (a) of the Act and ultimately the assessment was completed under Section 143 (3) of the Act on 27th March, 2002 at an amount of Rs. 3,96,46,565/- under the normal provisions and at Rs. 5,56,85,482/- as per the provisions of Section 115JA of the Act. Sometime thereafter, the Commissioner of Income Tax issued notice on 30th January, 2004 under Section 263 (1) of the Act. As per this notice, the Commissioner expressed a prima facie opinion that the order of assessment dated 27th



March, 2002 passed by the Assessing Officer was erroneous and prejudic

to the interest of the revenue on the following counts:-

I. Expenditure of Rs. 3,99,23,750/- was allowed as a deduction on account of 'Strategic Management Consultancy Fees'. Annexure-II of 3CD report enclosed with the return of income specifically mentions that this expenditure was of capital nature. The Assessing Officer should have disallowed this expenditure and added it back to the total income. As such income has been under assessed to this extent in the assessment order.

II. The Assessing Officer has incorrectly allowed deduction under Chapter VI-A without restricting these deductions to the extent of profits & gains of business. Deductions were allowed inclusive of income from other sources & capital gains, which is not admissible as per the scheme of the Act. In this case the gross total income of the assessee includes income from business of Rs. 30,43,83,783/-, long term capital gains of Rs. 6,90,88,457/- and income from other sources of Rs. 90,73,141/-. It is seen that income from long term capital gains and income from other sources was also adjusted against Chapter VI-A deductions relating to Section 80-IA, 80HHC and 80-O, which were to be restricted to the extent of profits and gains of business. As a result of this income of Rs. 3,85,15,033/- has escaped assessment.

III. The assessing officer omitted to disallow depreciation on the additions made to plant & machinery on account of loss due to fluctuation in the rate of exchange, which was not supported by actual remittance. The addition made to plant & machinery amount to Rs. 727.25 lacs should have been ignored as this amount was not actually permitted. Excess depreciation allowed on this account is to the extent of Rs. 181.31 lacs."

2. After the reply of the assessee was received and he was given hearing, the Commissioner passed orders dated 9th March, 2004.

3. In so far as the ground no.III as extracted above and stated in the notice is concerned, the explanation of the assessee was accepted by the Commissioner himself. On other two grounds, the Commissioner revised



the Income Tax Appellate Tribunal (ITAT). The ITAT has partly allowed this appeal of the assessee vide its impugned order dated 31st October, 2008. Further, the explanation of the assessee on ground no. I was also accepted by the Tribunal and the order passed by the Commissioner has been set aside to that extent. However, in respect of count II, the Tribunal has remanded back the matter to the Assessing Officer.

4. The perusal of count II, on the basis of which the Commissioner had revised the order, would show that the Commissioner was of the opinion that the Assessing Officer had incorrectly allowed the deduction in Chapter VI-A of the Act without restricting these deductions to the extent of profits & gains of business. Deductions were allowed inclusive of income from other sources and even the capital gains, which according to the Commissioner were not admissible as per Section 43A of the Act. To this extent, the Tribunal has concurred with the Commissioner as it is clear from the following discussion contained in the order of the Tribunal:-

“13. As regards the other issue relating to the claim of the assessee for deduction U/s 80IA, 80HHC and 80-O in respect of capital gain and other income, we are, however, of the opinion there was an error in the order of the AO in allowing the said claim at least in respect of capital gain. All these deductions claimed by the assessee were in respect of profits of the eligible business or undertakings and as the profits arising from sale of any capital asset declared by the assessee company itself under the head capital gain could not be regarded as profits of its business by any stretch of imagination, there was an error causing prejudice to the interest of the Revenue in the order of the AO allowing the deductions claimed by the assessee u/s 80IA, 80HHC and 80-O in respect of the said capital gain. The ld. CIT thus was thus fully justified in correcting the said error by revising the order of assessment on this issue by directing the AO not to allow deduction to the



instead of directing him to disallow the claim of the assessee for deductions in respect of the income straight away. In that view of the matter, we modify the impugned order of the Id. CIT and direct the AO to consider the issue relating to the claim of the assessee for deductions u/s 80JA, 80HHC and 80O in respect of other income after doing such exercise.....”

5. While agreeing with the Commissioner to this extent and finding that the order of the Assessing Officer was erroneous and prejudicial to the interest of the revenue, the Tribunal still modified the directions given by the Commissioner. The Tribunal was of the opinion that the CIT should have directed the Assessing Officer to carry out such exercise instead of directing him to disallow the claim of the assessee for deductions in respect of other income straight away. Thus modifying the orders of the Commissioner, the Tribunal has remitted the matter back to the Assessing Officer to consider the issue relating to the claim of the assessee for deduction under Section 80IA, 80HHC and 80-O of the Act in respect of other income after doing such exercise.

6. Learned Counsel for the appellant has argued that the view taken by the Assessing Officer was one of the plausible views and in support of his submission he has referred to the judgment of Apex Court in case of *Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax*, reported as 243 ITR 83.

7. When we find that the twin conditions for exercise of the power under Section 263 of the Act were satisfied viz.(i) the order of the Assessing Officer was erroneous, and (ii) it was prejudicial to the interest to the



8. We are of the opinion that this view taken by the Tribunal coupled with the aforesaid directions is in conformity with the law and, therefore, we hold that no substantial question of law arises. The appeal is dismissed accordingly.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

AUGUST 19, 2010.

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