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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 7th August, 2014

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ITA 11/2002

COMMISSIONER OF INCOME TAX DELHI Appellant
Through Mr. Balbir Singh, Sr. Standing
Counsel with Mr. Rupender Singhmar and
Mr. Abhishekh Singh Baghel, Advocates.

versus

M/S VIKAS CHEMICALS Respondent
Through Mr. S.Krishnan, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

In this appeal by the Revenue relating to assessment year 1992-93, by order dated 7th August, 2002, the following substantial question of law was admitted for hearing:-

“Whether the Income-tax Appellate Tribunal was justified in holding that the sum of Rs.45 lacs, paid by the assessee to the Customs authorities on account of redemption fine, was an allowable expenditure?”

2. The respondent-assessee, a partnership firm, was engaged at the relevant time in manufacture of organic chemicals. Under an agreement dated 9th June, 1987 with M/s India Craft, the respondent-assessee purchased 630 metric tonnes Isobutanol by sale on high-sea



basis. The said India Craft had procured the consignment Isobutanol from Netherlands against REP license issued in their favour. The respondent-assessee upon import applied for clearance of goods under REP licence, but the goods were detained. This resulted in litigation between the respondent-assessee and Customs authorities. The goods in question were sold in an auction on 14th March, 1989 pursuant to the direction of the Supreme Court. In the meanwhile and as directed, adjudication proceedings under the Indian Customs Act, 1962, (Customs Act, for short) were held whereby, redemption fine of Rs.90,00,000/- and penalty of Rs.10,00,000/- was imposed on the respondent-assessee, which on appeal was reduced to Rs.45,00,000/- and Rs.2,00,000/-, respectively.

3. The question raised in the present appeal is whether redemption fine of Rs.45,00,000/- could be claimed as an expenditure under Section 37 of the Income Tax Act, 1961 (Act, for short) or the same is hit by the Explanation to Section 37 or was not an expenditure, wholly and exclusively for purpose of business. Learned counsel for the Revenue has submitted that the expenditure in question would be barred under the Explanation to Section 37 as redemption fine was paid by way of penalty and as per Section 111(d) of the Customs Act, the goods in question were prohibited goods.

4. Learned counsel for the respondent-assessee has, however, relied



upon decision of this Court in *Usha Micro Process Controls Ltd. V*

Commissioner of Income Tax, (2013) 204 DLT 664. The said case also related to payment of redemption fine and reference therein was made to the judgment of the Madras High Court in *Commissioner of Income Tax Vs. N.M. Parthasarathy*, [1995] 212 ITR 105 and decision of the Supreme Court in *Prakash Cotton Mills Pvt. Ltd. Vs. Commissioner of Income Tax (Central), Bombay*, [1993] 201 ITR 684.

5. Learned counsel for the Revenue, however, submits that the decision in *Usha Micro Process Controls Ltd. (supra)* requires reconsideration in view of decisions of other high courts as noticed in *Commissioner of Income Tax Vs. Jayaram Metal Industries*, [2006] 286 ITR 403 (Kar) and *Maddi Venkataraman & Co. (P) Ltd. Vs. Commissioner of Income Tax*, [1998] 229 ITR 534 (SC). He submits that language of Explanation to Section 37 is quite clear and once it is held that the expenditure was incurred for any purpose, which was prohibited by law, the same is deemed not to be incurred for the purpose of business or profession. The said Explanation incorporates a deeming fiction, which must be given full effect to.

6. In the facts of the present case, we are not inclined to examine the larger issue raised by the appellant-Revenue because of the findings of fact recorded by the Tribunal. The requirement of



Explanation is that payment in form of expenditure should not be made for the purpose, which is prohibited by law. Finding of the Tribunal, as recorded in the impugned order, is that M/s India Craft had initially entered into a contract and had purchased Isobutanol under REP licence and the same was subsequently purchased by the respondent-assessee on high-sea basis. This was a commercial transaction between two unrelated parties. It is in these circumstances, that the respondent-assessee had applied for clearance of goods in India. Earlier similar goods had been cleared by the Customs authorities under REP licence. The fault or defect in the REP licence was not attributable to the respondent-assessee as the licenses were issued to India Craft. The respondent-assessee was not to be blamed and had not indulged in any offence or incurred any expenditure for the purpose, which was prohibited by law. The respondent-assessee had to pay redemption fine in order to save and protect themselves and in terms of the order passed by the Supreme Court, they had received the balance consideration from the auction proceeds. As noticed above, the goods had been sold in auction pursuant to the direction of the Supreme Court. The finding recorded by the Tribunal is that the conduct and action of the respondent-assessee was not blameworthy or commanding censure. The respondent-assessee wanted to set-off the redemption fine from the consideration received by them. In fact, the



respondent-assessee had only received the net amount after adjustment of the redemption fine. Of course, the penalty amount is not a subject matter of the present appeal and we express no opinion in that regard.

7. In view of the aforesaid, we do not think that the appellant-Revenue is entitled to succeed in the present appeal. The substantial question of law in the facts of the present case as found by the Tribunal has to be answered in favour of the respondent-assessee and against the appellant-Revenue. Ordered accordingly. No costs.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

**AUGUST 07, 2014
NA/VKR**