Pr. Commissioner Of Income-Tax-1 vs Nocil Limited

ID: F2J-C-2283 **Court:** Bombay High Court
Case: INCOME TAX APPEAL NO. 2037 OF 2018 **Date:** 2025-07-02

Bombay High Court Pr. Commissioner Of Income-Tax-1 vs Nocil Limited on 2 July, 2025 Author: B. P. Colabawalla Bench: B. P. Colabawalla 2025:BHC-OS:9970-DB

16-itxa-2037-2018.doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION Digitally signed by SMITA SMITA RAJNIKANT RAJNIKANT JOSHI INCOME TAX APPEAL NO. 2037 OF 2018 JOSHI Date: 2025.07.04 11:31:13 +0530

Pr. Commissioner of Income Tax-1 .. Appellant.

Versus

NOCIL Limited .. Respondent.

Adv. Suresh Kumar, for the Appellant.

Adv. Arati Vissanji, for the Respondent.

CORAM: B. P. COLABAWALLA & FIRDOSH P. POONIWALLA, JJ.

DATE: JULY 02, 2025

P. C.

1 The above Appeal is filed challenging the order of the Income

Tax Appellate Tribunal ("ITAT") dated 24 th May, 2017. The Assessment Year in question is A. Y. 2004-05. According to the the Revenue, the following substantial Question of Law arises for our consideration and which reads thus:-

" Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in accepting the assessee's plea that there was no demerger of Plastic Product Division and Petro Chemical division without appreciating that under the relevant scheme approved by the Bombay High Court, the transfer of the two divisions has been defined as demerger and Page 1 of 5 JULY 02, 2025 S.R.JOSHI ::: Uploaded on - 04/07/2025 ::: Downloaded on - 01/08/2025 21:34:43 ::: 16-itxa-2037-2018.doc therefore the condition of section 2 (19AA) stood fulfilled and accordingly the assessee was not eligible for set off and carry forward of business loss of the erstwhile undertaking u/s. 72A(4)?".

2 The facts of this case is that on 1 st November, 2004, the assessee filed a return of income, declaring a total income of Rs. 'Nil'. This return was processed under Section 143 (1) of the Income Tax Act, 1961 ("IT Act"). Thereafter, the case was selected for scrutiny and the assessment was completed under Section 143 (3) of the IT Act on 29 th December, 2006, determining the total income at Rs.7,47,48,963/- towards long term capital gains, and business income as 'Nil'. 3 Thereafter, the case was re-opened under Section 147 of the IT Act and notice under Section 148 [dated 30 th March, 2010] was issued and served on the assessee. During the re-assessment proceedings, the Assessing Officer asked the assessee to explain why carry forward loss of earlier years should not be denied for a set off against the income of A. Y. 2004-05 in view of the provisions of Section 72A(4) of the IT Act. The assessee thereafter answered that query and with which the Assessing Officer was not satisfied. He, accordingly disallowed the carrying forward of losses and held that the assessee is not allowed to carry forward losses for set off in the assessee's hand within the meaning of Section 72A (4) of the IT Act. Hence re- assessment was completed vide order dated 16th December, 2010. Page 2 of 5 JULY 02, 2025 S.R.JOSHI ::: Uploaded on - 04/07/2025 ::: Downloaded on - 01/08/2025 21:34:43 ::: 16-itxa-2037-2018.doc 4 Being aggrieved by this order of the Assessing Officer, the assessee filed an Appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A), vide his order dated 4 th February, 2013, partly allowed the Appeal of the assessee. The assessee was permitted to carry forward the business loss and unabsorbed depreciation, inter alia, on the ground that there was in fact no demerger as contemplated under the IT Act between the assessee on the one hand and Relene Petrochemicals Pvt. Ltd., and NOCIL Petrochemicals Ltd., on the other. Since there was no demerger, the provisions of Section 72A(4) of the IT Act were not attracted, was the finding of the CIT(A). 5 Being aggrieved by the order of the CIT(A), the Revenue preferred an Appeal before the ITAT without any success, and which has resulted in the impugned order. 6 We have carefully gone through the order of the CIT(A) as well as the order of the ITAT. The ITAT, after examining the provisions of Section 72A(4) of the IT Act, and the definition of words 'demerger' appearing in Section 2 (19AA) as well as the definition of the words ' demerger company' in Section 2(19AAA) and the words 'resulting company' in Section 2 (41A) of the IT Act, came to the conclusion that the meaning of the expression of 'demerger', 'demerged company' and the 'resulting company' signifies the Page 3 of 5 JULY 02, 2025 S.R.JOSHI ::: Uploaded on - 04/07/2025 ::: Downloaded on - 01/08/2025 21:34:43 ::: 16-itxa-2037-2018.doc manner in which Section 72A(4) of the IT Act is to be understood, especially since these expressions find a place therein. In other words, for Section 72A(4) of the Act to be attracted, there must first be a 'demerger' as understood under the provisions of the IT Act. The Tribunal came to the conclusion, and in our view correctly, that one of the conditions prescribed is that all the properties and liabilities relatable to the division/undertaking [being demerged], should be transferred to the 'resulting company' by virtue of such demerger. Secondly, for the demerger, consideration to be paid by the 'resulting company' is by way of issuance of shares to the share holders of the 'demerged company'. 7 The CIT(A) as well as the ITAT came to a factual finding, and which is not disputed even before us, that the Scheme of re-structuring approved by this Court (exercising its company jurisdiction) involved transfer of only specified assets and liabilities of the Petrochemicals Division and the Plastic Products Division of the assessee to Relene Petrochemicals Pvt. Ltd., and NOCIL Petrochemicals Ltd., respectively. Further, it is also a finding of fact by the two authorities below that the consideration paid by the 'resulting company' namely - RPPL and NPL was not by issuance of any shares but the payment was made in cash and which was also permitted under the said Scheme approved by this Court (in its company jurisdiction). Page 4 of 5 JULY 02, 2025 S.R.JOSHI ::: Uploaded on - 04/07/2025 ::: Downloaded on - 01/08/2025 21:34:43 ::: 16-itxa-2037-2018.doc 8 Once this is the factual situation before us, and which is undisputed, we find that CIT (A) and the

ITAT were fully justified in coming to the conclusion that the provisions of sub-section (4) of Section 72A were not attracted in relation to the Scheme of arrangement between the Assessee and RPPL and NPL sanctioned by this Court in its company jurisdiction. We, accordingly, find that the Question raised in the above Appeal does not give rise to any substantial Question of Law. 9 In view of the aforesaid discussion, we find no merit in this Appeal. It is accordingly dismissed. However, there shall be no order as to costs. 10 This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order. [FIRDOSH P. POONIWALLA, J.] [B. P. COLABAWALLA, J.] Page 5 of 5 JULY 02, 2025 S.R.JOSHI ::: Uploaded on - 04/07/2025 ::: Downloaded on - 01/08/2025 21:34:43 :::