(1990) 01 GAU CK 0001

In the Gauhati High Court

Case No : IT APPEAL No''s. 331 AND 332 (GAUHATI) OF 1989

ASSAM PLANTATION CROPS DEV. CORPN. LTD. APPELLANT

Vs

INSPECTING ASSISTANT COMMISSIONER. RESPONDENT

Date of Decision : 17-01-1990

Acts Referred:
Income Tax Act, 1961 — Section 2, 254, 256

Citation : (1990) 34 ITD 426

Hon'ble Judges : Egbert Singh M, C.J

Bench : Single Bench

Judgement

Per Shri Egbert Singh, Accountant Member - The first ground of appeal by the assessee for the first year is that the CIT (A) erred in not following the earlier decision of the Appellate Tribunal may be followed. The first ground of the second appeal by him for the earlier year, which may be reversed.

(2) Since the points involved are interlinked we take up the appeals together for disposal by this commissioner order.

(3) For the first year, the issue was regarding the assessability of Rs. 10,90,422 after a relief if Rs. 2,23,784 out of the interest income and other recites of Rs. 13,14,206. According to the assesses, this computation was wrong, contrary to the principles of law and accountancy and that the expenses claimed under different heads should have been allowed under the law. There are other grounds of appeal also for the year.

(4) In the assessment order for the first year, the assessing officer mentioned that the assessee is a corporation engaged mainly in agricultural activities and expenses claimed were found relating to agricultural operation mainly. He noticed from the balance-sheet that the assessee had fixed deposit of Rs. 2,71,77,500 and that there was interest income of Rs. 13,11,513 from the bank deposit. There were sales of pine appeal, rubber etc. The assessee claimed expenses of Rs. 23,43,196 including depreciation operation. He allowed only 10% as

admissible for earning interest income from banks. Interest income was separately computed at Rs. 10,90,420 for the first year.

5. The assessee took up the matter before the CIT (A) raising various grounds and contentions. Amongst other things, it was argued that the assessing officer was not justified in taking the above interest amount as income from other sources which should be treated as income earned while carrying on agricultural activities relying on the decision of the Appellate Tribunal in the case of the assessee for the earlier years upto 1979-80. The CIT (A) considered the submissions and was of the opinion that the decision of the Appellate Tribunal for the earlier year was logically not correct as the Tribunal has relied on the judgment of the Honble Supreme Court in the case of Challapalli Sugar Ltd. Vs. The Commissioner of Income Tax, A.P., Hyderabad, . It is pointed out by the CIT (A) that the decision of the Tribunal was not supported by the said decision in which it was held that the expenditure incurred before commencement of business would be capitalised and it was not the case before the Honble Supreme Court as to what treatment would be given regarding interest earned on the surplus fund. The CIT (A) went on further to discuss different legal aspects of the matter as dealt with by different High Courts, viz., the Honble Karnataka High Court in the case of Commissioner of Income Tax Vs. Cap Steel Ltd., Honble Kerala High Court in the case of Collis Line Pvt. Ltd. Vs. Income Tax Officer, A-Ward, . The CIT (A) ultimately on reasons recorded by him, held that the assessing officer was justified in taking the interest income as income from other sources and the assessees appeal on this point was dismissed, for the assessment year 1984-85.

6. For the following year, the assessing officer proceeded on a similar basis and worked out the income of the assessing officer proceeded on a similar basis 2nd worked out the income of the assessee at Rs. 18,85,450. On appeal by the assessee, the CIT (A) following his reasons given for the earlier year dismissed the appeal by the assessee on this appeal by the assessee.

7. We have heard both the sides at length and we have gone through the orders of the authorities below for our consideration. It is assessees case that the fact and circumstances for these years remaining the same, the CIT (A) should have followed the earlier decision of the Appellate Tribunal in the case of the assessee itself. There is no discussion or finding of fact by the CIT (A) that the facts relating to the years under consideration were different to some additional facts or evidence gad come up for discussion either by the assessing officer or by the CIT (A) in the present appeals apart from what have been dealt with by the Appellate Tribunal for the earlier years. In facts, from the orders of assessment also, we cannot find any feature to distinguish the facts of the present years from those of the earlier years. In such a situation, the Appellate Tribunal would not have the liberty to be inconsistent so as to pass a different order or opinion on the same set of facts. The order of the Appellate Tribunal was passed on 9-8-1985 and in fact no material has been placed to show that that the order of

the Appellate Tribunal was disturbed or upset by any process known to law.

8. It may be useful to refer to a decision of the Honble Bombay High Court in the case of H.A. Shah and Co. Vs. Commissioner of Income Tax and Excess Profits Tax, Bombay City, . It was observed, amongst other things, that while taking the view that the principle of res judicata would not strictly apply to Income Tax assessment, it was made clear that it was not suggested that it was open to the Tribunal to come to a different conclusion than arrived at by the very Tribunal to come to a different conclusion than arrived at by the very Tribunal earlier without any limitation whatsoever. Unless the second Tribunal may look upon the decision given earlier as erroneous in law so as to justify to come to a contrary conclusion, the earlier decision of the same question cannot be reopened if that decision is not arbitrate or perverse, if it had been arrived at after due inquiry, if no fresh facts were placed before the Tribunal giving the later decision. In fact, the Honble High Court observed that the Tribunal should be extremely slow the depart from a finding given by an earlier Tribunal as it was considered desirable that there should be mality and certainty in all litigations even under the Income Tax Act.

9. We may also refer to a decision of the Honble Supreme Court in the case of Commissioner of Income Tax, New Delhi Vs. Rao Thakur Narayan Singh, in which on the facts of that case it was held that as the order of the Appellate Tribunal became final, the finding of the Tribunal, even though by mistake, that the offer could not initiate reassessment proceedings in respect of the interest income also was binding on the Income Tax Officer and he could not reopen the assessment over again to include the interest income. It was observed by the Honble Supreme Court that if that were not the legal position it would result in placing an unrestricted power of review in the hands of the Income Tax Officer to go behalf the findings given by a hierarchy of Tribunals and even those of the High Court and the Supreme Court, with his changing moods. It was observed at page 239 bottom, that the Income Tax Officer was bound by the finding given by the Appellate Tribunal earlier on the point and he cannot on the same facts reopen the proceedings on the ground that he had new information and if he did so, it would be a clear attempt to circumvent the said order which had become final. As pointed out above, there was no new material having been placed before the CIT (A) or before us to inter that there were fresh facts or material for consideration. In the case of The Bhopal Sugar Industries Ltd. Vs. The Income Tax Officer, Bhopal, the Honble Supreme Court held that once the decision of the Appellate Tribunal has become final, the ITO is bound by the decision and refusal to carry out such directions would open for writ of mandamus before the appropriate authorities. It was held that such refusal was in fact a denial of justice and once the decision of the Appellate Tribunal having become final. It was not open to the judicial Commissioner to hold that the order was wrong and such violation was destructive of basic principle of justice. Amongst other things, it was observed at page 623 that counsel of the assessee conceded that even if the order of the Tribunal was wrong.

10. The Honble Orissa High Court in the case of Commissioner of Income Tax Vs. Belpahar Refractories Ltd., has also adopted the same reasoning as adopted by the Bombay High Court in the case of H. A. Shah & Co. (supra) at page 625.

11. As pointed out above, we find no material to say that the earlier decision of the Appellate Tribunal dated 9-8-1985 has been disturbed or challenged by any process known to law. i.e., by way of reference u/s 256(1), 256(2) or by way of rectification u/s 254(2) etc. In that view of the matter, the earlier decision of the Appellate Tribunal had become final. In this connection, we may refer to a decision of the Honble Punjab & Haryana High Court in the case of S.P. Gramophone Company Vs. Income Tax Appellate Tribunal and Others, in which on the facts and in the context of that case, it was held that if the correctness of the remand order was not challenged though appropriate proceedings, it would not be open to review it when the matter comes again before that authority in appeal or revision against the order passed by the authorities below in accordance with the remand order. Similar view was expressed by the Honble Delhi High Court in the case of R. K. SAWHNEY, EXECUtor OF THE ESTATE OF LATE R. B. NATHU RAM Vs. COMMISSIONER OF Income Tax, DELHI-II., in which amongst other things, it was observed that the earlier order of the Tribunal became final u/s 254(4), since the matter had not been pursued and there was no reference from that order. Therefore, to permit the executor to raise the contentions once again offended against the rule of finality of judicial proceedings.

12. It has been brought to our notice in the present case that in respect of the earlier order of the Appellate Tribunal, reference was sought for by the applicant Commissioner which was reject and no question was referred. Thereafter, the Honble High Court at Gauhati, at the instance of Commissioner u/s 256(2) directed the Appellate Tribunal to refer certain questions arising out of the earlier order of the Appellate Tribunal in the case of the assessee for the earlier years, vide judgment dated 27-1-1989 in the Civil Rule Nos. 1(M), 2(M), 8(M), and 13(M) /87 and a statement of the case has been called for by the Honbel High Court; whereas the impugned order of the CIT (A) for the both the year was rendered earlier, i.e., on 21-11-1988. Section 254(4) mentions that except as provided u/s 256, the order of the Appellate Tribunal on appeal shall be final. In other words, the order of the Appellate Tribunal for the earlier years in ITA Nos. 292 (Gau.) to 295 (Gau.) of 1983, dated 9-8-1985 had not become final in view of the above provision. But as indicated earlier, no fresh facts or materials have been shown to have been cropped up in the present two years under consideration. In fact, the first ground of appeal by the assessee for the first year was every much on the score. In such a situation, it may be helpful to refer to a decision of the Honble Madras High Court in the case of Commissioner of Income Tax, Central Vs. L.G. Ramamurthi and Others, in which on the facts of that case and in the context of that Madras case, it was held that no Tribunal of fact has any right or jurisdiction to come to a conclusion entirely contrary to the one reached by any the institutional integrity itself and it would not only sale the

confidence of the public in the judicial procedure as such, but it would also totally destroy such confidence.

13. Thus, considering the over all factual matters and the issue involved in the present appeals for the years, we are of the opinion that the matter should go back to the file of the CIT (A) for fresh disposal to reduced the issue keeping in view the decision of the Appellate Tribunal for the earlier year on the same point of dispute. Besides, the CIT (A) has not dealt with the grounds of appeal by the assessee regarding full expenses incurred by the assessee in earning the interest and that the interest income should have been treated as income of the assessee earned while carrying out the agricultural activities. According to the assessee, the agricultural activities and earning of interest was one and indivisible unit of business of the assessee and the expenses pertaining to agricultural operation should have been set off against the income of the assessee. According to the CIT (A), agricultural income of the assessee is in the nature referred by section 2(1)(b) (c) and, therefore, the same has to be computed as business income. But the CIT (A) had not looked into or dealt with other connection regarding the claim of the assessee as mentioned above that the entire expenditure should have been considered for deduction, when there were agricultural activities as noted by the assessing officer. That apart Rule 7 of the Income Tax Rules, 1962, would have to be taken into account which apparently appears to have not been considered by the CIT (A) for both years under consideration. The CIT (A), if considered necessary, may call for a remand report in this respect. Accordingly, we set aside both the orders of the CIT (A) for fresh disposal by him as indicated earlier. The CIT (A) would please give adequate apportunity of being heard to both the sides.

14. In the result, the appeals by the assessee are treated as allowed for statistical purpose.

