
(2012) 08 KAR CK 0253
In the Karnataka High Court
Case No : ITA No"s. 739, 740 and 750 of 2006

CIT and Another	Vs	APPELLANT
Glowtronics Ltd.		RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Citation : (2012) 08 KAR CK 0253

Hon'ble Judges : D.V. Shylendra Kumar, J;B.V. Pinto, J

Bench : Division Bench

Advocate : M. Thirumalesh, for the Appellant; A. Shankar and M. Lava, for the Respondent

Judgement

D.V. Shylendra Kumar, J.—All these appeals u/s 260A of the IT Act, 1961 (for short the Act) are by the Revenue and relating to the assessment years 1995-96, 1993-94 and 1992-93 respectively. The Revenue is aggrieved by the common order dated 5-10-2005 (copy at Annex. A) passed by the Tribunal in the appeals of the for all the three assessment years and also the Cross-objection Nos. 41/B/03 and 42/B/03 arising out of the assessment years 1992-95 and 1995-96 respectively, which had been preferred by the Revenue before the Tribunal.

2. The Tribunal having allowed the appeals of the assessee in part for all the three assessment years and having dismissed the cross-objection of the Revenue relating to assessment year 1995-96, the Revenue is in appeal before us by preferring three appeals for each of the assessment years referred to above.

3. The substantial questions that arise for consideration in these appeals are as under:

1. Whether the Tribunal was correct in reversing the finding of the AO which was confirmed by the CIT(A) that Electron Guns and Electron Gun Heaters should be valued at Rs. 36 and Rs. 2.75, that is the cost as held by the apex Court in Commissioner of Income Tax Vs. British Paints India Ltd., and s. 145 of the Act.

2. Whether the Tribunal was correct in not taking into consideration the facts like the assessee treating the return goods on-par with other saleable goods both in its accounts and excise register and that the assessee's methods of accounting had not been found fault with further the earlier assessment years which was contrary to the facts and legal position and consequently recorded a perverse finding.

3. Whether the Tribunal committed an error in proceeding to hold that miscellaneous income derived from sale of scrap, waste acid, used chemicals and interest income from delayed payment by customers and on deposits made by appellant cannot be reduced by 90 per cent as per clause (baa) of section 80HHC for the purpose of computation of deduction.

4. Whether the Tribunal committed an error in failing to take into consideration the judgment of the Bombay High Court reported as Commissioner of Income Tax Vs. Nagpur Engineering Co. Ltd., and the judgment relied on by the Tribunal of the Delhi Tribunal was pertaining to earlier assessment year before the insertion of clause (baa) to section 80HHC by the Finance Act, 1991 w.e.f. 1-4-1992.

4. We have heard Sri Thirumalesh, learned standing counsel appearing for the appellant-Revenue and Sri Shankar, learned counsel for the respondent-assessee.

5. With reference to the questions posed for examination in these appeals, submission of Sri Thirumalesh, learned standing counsel appearing for the appellant-Revenue is that the Tribunal has gone wrong in totally misunderstanding the ratio of the judgment of the Supreme Court in the case of Commissioner of Income Tax Vs. British Paints India Ltd., and due to this error of understanding erroneously set aside the order of the AO affirmed in appeal who had rightly applied the ratio in the case of British Paints India Ltd. (supra) and therefore the order passed by the Tribunal for all the three years is vitiated by wrong understanding of the judgment of the Supreme Court in the case of British Paints India Ltd. (supra) etc.

6. It is also urged that as the assessee had brought in certain discrepancies in valuing the closing stock for the financial year corresponding to assessment year 1994-95, while valuing the stocks for the period relevant for the assessment year in question i.e., assessment year 1995-96, the AO had set right the discrepancies, but the Tribunal opining that it is not correct has also affected the decision of the Tribunal.

7. One another question which is sought to be urged relating to the appeal arising for the year 1995-96 is that in the matter of computing the benefit that the assessee is entitled under the provisions of section 80HHC of the Act, computation of profits attributable to the export turnover has not been properly done; that it is not fully in consonance with the judgment of the Supreme Court in the case of Commissioner, Income Tax, Thiruvananthapuram Vs. K. Ravindranathan Nair, which decision has in fact been explained and applied by

the Division Bench of this Court in IT Appeal Nos. 793 to 796 of 2006 as per judgment dated 6-6-2012 and therefore the order of the Tribunal warrants correction to this effect etc. These arguments are elaborated further by learned counsel for the Revenue.

8. However Sri Shankar, learned counsel for the respondent-assessee has while made submissions relating to the valuation of the opening stock for any year that it should necessarily be the value of the closing stock for the earlier year and this is an accepted norm in accountancy and method of accounting, it is also submitted that it is also an equally accepted principle that for the purpose of valuing the stock, the assessee has a choice of valuing the stock either at cost of acquisition or at market value whichever is lower and therefore when the assessee had uniformly valued this method, particularly, in the matter of valuing such part of the stock which had become either obsolete, goods rejected and returned by the customers and wherein they do not even have the value of the cost price and the assessee had valued such part of the stock at scrap value or nil, rejecting that method for the particular year when it had been accepted for other years is not permitted for the Revenue; that the Revenue cannot impose terms on the assessee in the manner of valuing the stock and therefore the Tribunal has corrected this and there is no need for interference.

9. But, more importantly, Sri Shankar, learned counsel for the assessee has raised preliminary objection about the maintainability of these appeals, pointing out that in the wake of introduction of section 268A of the Act and having regard to the provisions of this section and the board circular following the introduction of section 268A of the Act, Instruction No. 3 dated 9-2-2011 [(2011) 238 CTR (St) 154: raising the value for the subject matter of appeal to be filed by the Revenue before the High Court u/s 260A of the Act from the earlier limit of Rs. 4 lakhs to Rs. 10 lakhs and following this, the Division Bench of this Court having taken the view that the rise of the monetary limit in the valuation of the appeal applies to even appeals which were admitted earlier and pending before this Court as per the reported decision of this Court in the case of The Commissioner of Income Tax C.R. Building Queens Road Bangalore. and The Joint Commissioner of Income Tax Special Range-4 C.R. Building Queens Road Bangalore Vs. M/s. Ranka and Ranka III Floor, Ranka Chambers 31. Cunningham Road Bangalore, and having dismissed the batch of appeals preferred by the Revenue and wherein the valuation was less than Rs. 10 lakhs as not tenable or maintainable, these appeals should necessarily be dismissed following the view taken by the earlier Division Bench of this Court and therefore there is no need to go into other questions etc.

10. However, Sri Thirumalesh, learned counsel for the appellant-Revenue has joined in issue on this aspect by pointing out that the correctness of the judgment of this Court in the case of Ranka & Ranka (supra) is subject-matter of appeals before the Supreme Court; that the appeals when filed were very much maintainable in law; that it was only circular under Instruction No. 2 of 2005"

through issued u/s 119A of the Act as was the statutory provision under which such circulars were being issued at that time, but in the language of section 268A(5) of the Act, that circular also being deemed to be one issued u/s 268A of the Act and that having indicated that whiles the limit of the value of the appeals being Rs. 4 lakhs and less which were not to be preferred by the Revenue, but above Rs. 4 lakhs for all the years put together, the questions having arisen and also having recurring effect, such appeals were tenable even at that time and even Circular No. 3 of 2011 also having left scope for certain types of appeals involving certain questions to be pursued by the Revenue even when the value is less than Rs. 10 lakhs, the mere fact that either valuation is below Rs. 10 lakhs or that this Court had taken a view for dismissing some of such appeals earlier can come in the way of maintaining the present appeals and submits that opening is indicated even in the judgment of this Court for maintaining the appeals below value of Rs. 10 lakhs preferred by the Revenue u/s 260A of the Act by bringing to our attention the following observations made by the Division Bench of this Court in the case of Ranka & Ranria (supra).

29. It is also not out of place to mention herein that the Parliament wanted to grant statutory recognition to these orders/instructions/circulars, issued by the Department from time to time retrospectively to take care to protect the interest of the Revenue by introducing sub-sections (2) and (3) in section 268A of the Act. This benefit conferred on these assesseees would be only in the nature of one time settlement because if the same issue arises for consideration in the subsequent years and the tax effect is more than Rs. 10 lakhs, it is not open to them to plead that either the Department is estopped from claiming such amount or that the order passed by this Court dismissing the appeals on the ground that the tax effect being within the monetary limit "would, come in the way of the Department proceeding against the assessee. The circular also makes it clear that in the pending appeals, where constitutional validity of the provisions of the Act or rule are under challenge, or where Boards order, notification, instruction or circular has been held to be illegal or ultra vires or where Revenue audit objection in the case has been accepted by the Department, notwithstanding the fact that the tax effect is less than the monetary limit fixed under the aforesaid circular,, still it is open to the Department to request the Court to permit them to prosecute such appeals. Thus, the Department has to apply its mind in all the pending appeals and point out to the Court, which are those appeals in which they intend to prosecute. Therefore sufficient safeguards have been made to protect the interest of the public revenue. By this approach we would be saving the time of the Court, the time of the Department and public time in general and giving effect to the National Litigation Policy, 2011, so that it can be used for better and productive purpose.

11. One another contention that Sri Thirumalesh, learned counsel for the Revenue has brought to our notice is certain observations made by the Supreme Court while rejecting the special leave petitions preferred by the Revenue in respect of the order of the Delhi High Court in the case of CIT vs. Surya Herbal

Ltd. in SLP (CC) No. 13694 of 2011 disposed of on 29th Aug., 2011 taking similar view as that of the Division Bench of this Court in the case of Ranka & Ranka (supra) and also in respect of another judgment of the Delhi High Court in the case of CIT v. Jagdish Moolchandani, in SLP (CC) No. 20924 of 2011 disposed of on 2nd Jan., 2012.

12. It is not necessary for us to examine the effect of these observations made by the Supreme Court, particularly, as it is submitted that the Revenue is in appeal before the Supreme Court and if the Supreme Court should decide the question one way or the other, that will definitely conclude the matter. Though we find that the order of the Tribunal is not very satisfactory, particularly on the questions as to whether the method of valuation of stocks and as contended by the assessee can be the proper way, as the assessee has adopted the method of valuing some part of its stock on market value and some part of its stock on cost of a production which in our opinion is not a choice given to the assessee, but the choice being to value the stock as a whole, either on market value basis or at the cost of production and the other question as to the quantification of the profits eligible for benefit u/s 80HHC of the Act, the question is said to be covered by this Court, as on the question of maintainability as urged by Sri Shankar, learned counsel for the assessee, we find that taken year wise the tax effect for each of the year itself being below a sum of rupees four lakhs as per the chart below furnished by the learned counsel for the assessee,

Calculation sheet--Tax effect on disputed amount

Therefore, without going into further examination of the implications of the judgment of this Court in the case of Ranka & Ranka (supra), but to maintain judicial decorum and judicial propriety and more so because the Revenue is already in appeal before the Supreme Court for the resolution of this very question, we do not propose to decide these appeals on merits, but dismiss them only due to the insignificant tax effect involved in these appeals but subject to the result of the appeals before the Supreme Court, preferred by the Revenue on the question of maintainability of such appeals, without going into the merits of the questions of law raised in these appeals and leave it open to be decided as and when the occasion arises either as a sequel to the decision of the Supreme Court in the appeals of the Revenue now pending there or if the very questions are brought before this Court for answer for the subsequent assessment years in respect of the very assessee or in respect of other assesseees also such questions arise for examination and answer.