

(2011) 02 P&H CK 0427

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No's. 839 and 840 of 2010

CIT

APPELLANT

Vs

Metalman Auto (P.) Ltd.

RESPONDENT

Date of Decision : 11-02-2011

Acts Referred:

Income Tax Act, 1961 — Section 10(35), 14A, 260A, 80HH, 80IB

Citation : (2011) 336 ITR 434

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This order will dispose of IT Appeal Nos. 839 and 840 of 2010 as it has been stated by the learned Counsel for the Revenue that both the appeals relate to same Assessee and involve some common questions.

2. IT Appeal No. 840 of 2010 has been preferred by the Revenue u/s 260A of the IT Act, 1961 (for short the Act) against the order dt. 29th Jan., 2010 of the Tribunal, Chandigarh Bench B, Chandigarh in ITA No. 602/Chd/2008 for the assessment year 2004-05 proposing to raise following substantial questions of law:

(i) Whether on the facts and circumstances of the case, Honble Tribunal is justified in law in allowing deduction u/s 80-IB on labour job receipts ignoring the fact that such income is not derived from the eligible business of industrial undertaking of the Assessee company ?

(ii) The Honble Tribunal has not correctly appreciated the fact that appeal against the decision of Honble Punjab & Haryana High Court in the case of CIT v. Impel Forge & Allied Industries Ltd. passed in IT Appeal No. 543 of 2008, dt. 5th Dec, 2008 was not filed by the Department before the Honble Supreme Court due to the reasons that the tax effect involved in that case was less than the monetary limits of Rs. 10 lakhs for filing SLP as per CBDT Instruction No. 5 of 2008, dt. 15

May, 2008 ((2008) 217 CTR (St) 1) ?

(iii) Whether on the facts and circumstances of the case, Honble Tribunal is justified in law in allowing deduction u/s 80-IB on other miscellaneous income being miscellaneous receipts, rebate and discount and balances written off etc. whereas such income is not derived from the eligible business of industrial undertaking of the Assessee company ?

(iv) Whether on the facts and circumstances of the case, Honble Tribunal is justified in law in allowing depreciation on the assets which were not owned by the Assessee company but were purchased in the name of managing director of the company and his wife ?

(v) Whether on the facts and circumstances of the case, Honble Tribunal is justified in law in allowing depreciation on electric installation @ 25 per cent instead of 15 per cent allowed by the AO ignoring the fact that the additions made to the electric installation were relating to electric panels and other accessories which was not found to be part of plant and machinery ?

(vi) The Honble Tribunal has misinterpreted the fact that the Department has accepted the issue at (v) above in Assessee's own case for the assessment year 2003-04 as no appeal against the decision of learned CIT(A) was filed before the Honble Tribunal, whereas the fact is that the appeal against the decision of learned CIT(A) passed in Appeal No. 216-IT/CIT(A)-1/2005-06, dt. 29th April, 2008 in Assessee's own case for the assessment year 2003-04 on the issue under consideration was not filed by the Department for the reasons that the tax effect involved in that case was less than the monetary limits for filing appeal before the Honble Tribunal as per Boards Instruction No. 5 of 2008, dt. 15th May, 2008 ?

(vii) Whether on the facts and circumstances of the case, Honble Tribunal is justified in law in allowing exemption on the income i.e., dividend income which was not claimed as exempt in the return of income filed by the Assessee and the AO had rightly not allowed exemption of dividend income u/s 10(35) in view of the decision of Honble Supreme Court in the case of Goetze (India) Ltd. v. CIT (2006) 204 CTR (SC) 182,

3. While assessing the income of the Assessee for the assessment year in question, the AO made certain additions on account of following:

(i) Deduction claimed u/s 80-IB in respect of receipt from the job work/processing charges was disallowed on the ground that the said income was not derived from specified industrial undertaking.

(ii) Deduction u/s 80-IB in respect of miscellaneous receipts, rebate and discount and balances written off etc. was also disallowed on the ground that the same were not derived from eligible business.

(iii) Deduction u/s 80-IB in respect of interest income was disallowed on the same ground.

(iv) Depreciation on air conditioners was disallowed on the ground that same were in the name of managing director of the company and his wife and not in the name of the Assessee, (v) Depreciation on electrical installations claimed at the rate applicable to plant and machinery was not allowed on the ground that the electric installations were separate from plant and machinery attracting less rate of depreciation.

(vi) Dividend income though exempt u/s 10(35) was not treated as exempt in absence of claim in the return following the judgment of Honble Supreme Court in Goetze (India) Ltd. v. CIT (2006) 204 CTR (SC) 182.

4. The CIT(A) partly allowed claim of the Assessee which was upheld by the Tribunal except with regard to interest income and X-objection of the Assessee was allowed by recording the following findings:

Job work

Therefore, we affirm the finding of the CIT(A) that the job work income has been earned by the Assessee by carrying out manufacturing activities for outside parties, which are similar to those carried on by the Assessee for manufacturing products for own sale. As a consequence, it follows that the labour/job work receipts have been earned by the Assessee in the course of manufacturing of products, albeit for an outside party. Merely because the article is produced for an outside party, and the Assessee earns job work charges thereon, would not disentitle the Assessee from being regarded as entity carrying out manufacturing activity. The said proposition has been upheld by the Honble Delhi High Court in the case of Northern Aromatics Ltd. (supra) and the Chandigarh Bench of the Tribunal in the case of Impel Forge (P) Ltd. (supra) and relied upon the judgment of the Honble Delhi High Court to hold similarly. Apart from the aforesaid, we find that the Honble Madras High Court in the case of Commissioner of Income Tax Vs. Taj Fire Works Industries, has upheld a similar proposition. In the case before the Honble Madras High Court, the Assessee was engaged in the business of fireworks. It was doing job work on the raw materials supplied by the customer and on the income earned, it claimed deductions u/s s 80HH and 80-1 of the Act.-

Miscellaneous income

The CIT(A) has held that the income so credited by the Assessee can be said to be derived from the industrial undertaking so as to fall within the meaning of Section 80-IB of the Act. In the absence of any adverse material and smallness of the dispute, we are inclined to affirm the conclusion of the CIT(A) and dismiss the ground raised by the Revenue.

Depreciation on air-conditioners

The asset has been acquired with the funds of the Assessee and is being put to use for its business purpose. Merely because the invoices are raised in the name of the managing director and the wife of the chairman, does not distract from the fact that the beneficial owner is the Assessee and that the assets are put to use

for the purposes of the Assessee's business and not for personal use of the managing director or the chairman.

Depreciation of electrical installations

In this regard, the facts are that the Assessee had claimed depreciation @ 25 per cent on electrical installations, whereas the AO allowed the same @ 15 per cent. Accordingly, depreciation to the extent of Rs. 3,01,423 was disallowed by the AO. In appeal, the Assessee contended that in the earlier assessment year of 2003-04, the CIT(A) had allowed depreciation on electrical installations @ 25 per cent. Following the precedent, CIT(A) held that the electrical installations were to be treated as part of the plant and machinery and depreciation @ 25 per cent was allowable.

Revenue cannot be permitted to raise an issue in isolation in one year while accepting the finding on the same issue in Assessee's own case of an earlier year. On the basis of the aforesaid, we find it expedient to dismiss the ground of appeal raised by the Revenue.

Dividend income

We have carefully perused the judgment of the Honble Supreme Court and find that the same relates to the power of the AO to entertain a claim not made in the return of income and therefore, it does not militate against the action of the CIT(A) in having considered the impugned claim. In fact, relevant judicial pronouncement on this point is the judgment of the Honble jurisdictional High Court in the case of Commissioner of Income Tax Vs. Rewari Central Co-operative Bank Ltd., . The Honble High Court in this case, was dealing with a question as to whether the CIT(A) was competent to adjudicate upon an issue which did not arise out of the order appealed and thereby holding that the income of the Assessee was exempt u/s 80P of the Act. In that case, the plea raised by the AO was that the claim of exemption u/s 80P was not considered during assessment proceedings whereas the CIT(A) entertained such claim and held the Assessee as entitled to exemption u/s 80P of the Act. The Tribunal had upheld the stand of the CIT(A) and on further challenge before the Honble High Court, it was held that failure of the Assessee to raise the plea of exemption before the AO cannot disentitle it to the benefit of a statutory exemption. Considered on similar parity of reasoning, in the instant case, the claim of the Assessee is in terms of the statutory provision contained in Section 10(35) of the Act and the Assessee cannot be denied the same merely because it was not raised before the AO. Thus, the CIT(A) made no mistake in entertaining the plea of the Assessee for exemption u/s 10(35) of the Act and holding the Assessee eligible for the same.

4. We have heard learned Counsel for the Appellant.

5. We are of the view that questions raised in the appeal cannot be held to be substantial questions of law.

6. The Assessee admittedly did the job work qualifying as eligible business u/s

80-IB. On the said issue, view taken by the Tribunal earlier was upheld by this Court vide judgment dt. 5th Dec, 2008 in case of IT Appeal No. 543 of 2008 (CIT v. Impel Forge & Allied Industries Ltd.). The view taken by the Tribunal being consistent with the earlier view taken by this Court, the said question cannot be held to be substantial question of law. Miscellaneous receipts from rebate, discount and balances written off are incidental to the profits and gains derived from eligible business u/s 80-IB. The air conditioners though purchased in the name of the managing director and his wife are for the Assessee and were to be used for the business of the Assessee and not for personal use of the managing director or his wife. Depreciation was, thus, admissible thereon. Electrical installations were part of plant and machinery and even for the earlier years, the depreciations were allowed. Dividend income was statutorily exempt. Mere omission to claim the said exemption in the return could not debar the Assessee from claiming the same. Judgment of Honble Supreme Court in Goetze (India) (supra) was not applicable to such exemption as rightly held by the Tribunal. Accordingly, no substantial question of law arises.

7. In IT Appeal No. 839 of 2010 apart from the questions proposed in IT Appeal No. 840 of 2010, following additional substantial questions of law have been proposed:

(i) Whether on the facts and circumstances of the case, the Honble Tribunal is justified in law in allowing Assessee to write off 80 per cent of the cost of tools and dies not taking into account the date of purchase and without going into the merits of the case ?

(ii) Whether on the facts and Circumstances of the case, the Honble Tribunal is justified in law in treating designing and consultancy charges on tools and dies as revenue expenditure whereas actually it is capital expenditure ?

(v) Whether on the facts and circumstances of the case, the Honble Tribunal is justified in law in holding that there cannot be a presumption that certain expenditure is bound to have been incurred for earning exempt income when the AO has rightly held that the Assessee is borrowing money one hand at a higher rate of interest and on the other hand is investing the money for earning interest-free income and deleting addition made by the AO u/s 14A ?

8. In respect of the above questions, the AO held that the writing off the expenditure on costs of tools and dies had to be equal to 40 per cent on the analogy of depreciation for half of the year. The CIT(A) upheld the claim of the Assessee which has been affirmed by the Tribunal on the ground that the Assessee had been consistently adopting the same pattern. Tools and dies once put to use lost resale value and could be sold only as scrap. The Tribunal affirmed the following observations of the CIT(A):

I have considered the rival contentions carefully. I agree with the Appellants contention that there is no reason to change the method of accounting regularly followed by it in writing off 80 per cent of tools and dies purchased every year.

The Appellant has been following the method of accounting year after year, which has been accepted by the AO in earlier years. No new facts have been emerged this year which can justify the change in Revenues stand. Once the tool/die has been put to use, it loses resale value as a tool/die and can only be sold as scrap. That being the case, even if the tool/die is used for a few days, its value will reduce to the scrap value of the product. In the case of Leader Valve Ltd. (supra), the Honble Punjab & Haryana High Court have held that keeping in view the principle of consistency the Revenue could not be permitted to raise an issue in isolation only for one year while accepting the findings on the same issue for other Assessee and for other years in the case of the Assessee. Hence, following the principle of consistency, the disallowance made by the Assessee is vacated. This ground of appeal is allowed.

9. As regards designing and consultancy charges on tools and dies being treated as revenue expenses, the AO held that the said expenditure was required to be capitalised. On appeal, the claim of the Assessee was upheld by the CIT(A) as well as by the Tribunal. The Tribunal observed:

The CIT(A), in our view correctly inferred that the consultancy charges is a revenue expenditure incurred in the course of carrying on the business and the same does not lose its revenue character merely because it is incurred in relation to tools/dies. The CIT(A) has also noted that the impugned expenditure is related to the work done by the payee during the year. Considering the discussion made by the CIT(A), we find no justification for the stand of the AO and accordingly the ground raised by the Revenue is dismissed.

10. The AO held that for earning dividend income, the Assessee must be presumed to have incurred some expenditure which had been disallowed u/s 14A. On appeal, the CIT(A) held that in absence of evidence of any expenditure having been shown to have been incurred, disallowance u/s 14A was not justified. This view has been upheld by the Tribunal. The Tribunal observed: -

25. Ground No. 4 is regarding disallowance u/s 14A of the Act in relation to the exempt income earned by the Assessee. In this regard, the facts are that the Assessee had earned income by way of interest on UTT Bonds and dividend of Rs. 54,000 and Rs. 93,08,912 respectively/which was exempted from tax. The AO estimated a sum of Rs. 1,00,000 having been incurred by the Assessee for earning such exempt income and accordingly, made an addition u/s 14A of the Act. Out of the sum of Rs. 1,00,000, Rs. 65,000 was considered as interest expenditure relatable to the borrowed capital used for investment in the securities yielding exempt income and Rs. 35,000 was estimated out of the administrative expenses. The CIT(A) has deleted the addition on the ground that the investments have been made from funds on which no interest has been paid. The CIT(A) also noticed that the AO has not backed his assertion that investments were made from combined funds of the Assessee which could not be bifurcated. Against the deletion of addition, the Revenue is in appeal before us.

26. Obviously, the issue is to be decided in the light of the judgment of the Honble jurisdictional High Court in the case of Hero Cycles Ltd. (supra). As per the Honble jurisdictional High Court, the disallowance u/s 14A requires a finding of incurrance of expenditure for earning the exempt income. In case no expenditure has been incurred, the disallowance u/s 14A is not justified. In other words, there cannot be a presumption that certain expenditure is bound to be incurred for earning the exempt income. Considered in this light, we find that there is no mistake in the order of the CIT(A). Puite clearly, the AO had only made a presumption that certain expenditures have been incurred for earning the impugned exempt incomes. Therefore, following the parity of reasoning laid down by the Honble jurisdictional High Court in the case of Hero Cycles Ltd. (supra), we affirm the decision of the CIT(A) and accordingly, ground raised by the Revenue is dismissed.

11. We have heard learned Counsel for the Appellant.

12. The questions raised cannot be held to be substantial questions of law.

13. As held by the CIT (A) and the Tribunal tools and dies lost their utility after use and the Assessee was consistently writing off 80 percent of the costs. The view taken cannot be held to be erroneous.

Amount spent on consultancy on tools and dies are obviously revenue expenditure as expenditure on tools and dies itself could not be treated as capital expenditure. On the issue of disallowance u/s 14A presumptive expenditure in absence of actual expenditure could not be taken into account. The finding of the Tribunal is consistent with the earlier view of this Court noted by the Tribunal. Thus, no interference is called for.

14. Both the appeals are dismissed.