(2013) 07 AHC CK 0312

In the Allahabad High Court

Case No : IT Appeal Nos. 22 and 23 of 2009

CIT APPELLANT

Vs

Northern Electronics System (P.) Ltd. RESPONDENT

Date of Decision : 31-07-2013

Acts Referred:

Citation : (2013) 07 AHC CK 0312

Hon'ble Judges : Sibghat Ullah Khan, J;Satish Chandra, J

Bench : Division Bench

Judgement

Satish Chandra, J.—Both the appeals have been filed by the Revenue u/s 260A of the IT Act, against the consolidated judgment and order dt. 17-10-2008 passed by the Tribunal in ITA Nos. 281/Luck/2004 and 372/Luck/2005 for the assessment years 2000-01 and 2001-02.

2. A Co-ordinate Bench of this Court on 23-3-2009 had admitted the appeals on the following substantial questions of law:

1. Whether the deletion of interest payment amounting to Rs. 20,67,959 by the Tribunal is proper and justified especially when the conditions as stipulated u/s 40A(2)(a) of the IT Act for disallowance of such interest are present in the case ?

2. Whether the deletion of interest payment by the Tribunal is justified on the ground that the same has been allowed in the earlier years and more so when it is well settled that principles of res judicata and estoppel are not applicable under IT Act ?

3. The brief facts of the case are that for the assessment years under consideration, the assessee has filed loss returns in the status of company. During scrutiny, the assessing officer observed that the assessee has claimed the deduction of interest which includes major part of the interest @ 23 per cent paid to M/s. Gemini Financer. The AO invoked the provision of section 40A(2Ma) of the Act by observing that interest @ 23 per cent was excessive while fair market rate

by conservative estimates was not more than 18 per cent. He also pointed out that the assessee was having cash in hand of Rs. 20 lacs and bank balance in the current account was also Rs. 12 lacs approximately. So, it could not be said that the above loan was for legitimate needs of the business. Finally, the assessing officer has disallowed the interest 23 per cent-18 per cent = 5 per cent and made the addition for each assessment year under consideration. For both the assessment years, the Commissioner (Appeals) has upheld the orders passed by the assessing officer. Being aggrieved, the assessee has filed the appeals before the Tribunal who has deleted the additions. Not being satisfied, the Department has filed the present appeals.

4. With this background, Sri D.D. Chopra, learned counsel for the Revenue at the strength of written note submits that the interest paid to M/s. Gemini Financer is in excess. On specific query from the Bench, he admits that in earlier assessment year (1999-2000), the same rate of interest was accepted by the Department. For this purpose, he submits that each assessment year is independent and principle of res judicata is not applicable as per the ratio laid down in the case of J.K. Oil Mills Co. Ltd. Vs. Commissioner of Income Tax, According to him, principle of estoppel/res judicata is not applicable in the income tax matters as per the ratio laid down in the case of Commissioner of Income Tax, West Bengal Vs. Brij Lal Lohia and Mahabir Prasad Khemka, Lastly, he made a request to set aside the impugned order passed by the Tribunal and restored the order passed by the lower IT authority.

5. On the other hand, Sri K.R. Rastogi, holding brief of Sri S.K. Garg, learned counsel for the assessee has relied on the impugned order passed by the Tribunal.

6. We have heard both the parties at length and gone through the material available on record.

7. From the record, it appears that in the earlier assessment year (1999-2000), interest @ 23 per cent was accepted by the Department when the loan was raised by the assessee and during the assessment years under consideration, no fresh loan was taken from the sister-concern. It is not the case of the Department that the interest was not paid @ 23 per cent in the earlier years. The disallowance u/s 40A(2)(a) can be made when the expenditure is excessive or unreasonable having regard to the deduction from the value. The said section is reproduced as under:

Section 40A(2)(a): Where the assessee incurs any expenditure in respect of which payment has been or is to be made to any person referred to in clause (b) of this subjection, and the assessing officer is of opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him there from, so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as a deduction.

8. We agree with the submissions made by the learned counsel for the appellant that the principle of res judicata or estoppel is not applicable in the income tax proceedings, as each assessment year is an independent assessment year. But fact remains that where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year, as per the ratio laid down in the case of M/s. Radhasoami Satsang Saomi Bagh, Agra Vs. Commissioner of Income Tax, Similar views were expressed in the case of Sardar Kehar Singh Vs. Commissioner of Income Tax and Others, In other words, the principle of res judicata is not strictly applicable in income tax matters. The findings in earlier years on the same facts are relevant for the subsequent assessment year as per the ratio laid down in the case of Taraben Ramanbhai Patel and Another, Harshadkumar Natvarlal Dalal and Others, Arvindbhai Chhotabhai Patel and Another Vs. Income Tax Office and Others, as well as in the case of Dhansiram Agarwalla Vs. Commissioner of Income Tax,

9. In the case of Radhasoami Satsang (supra), it was observed by the Hon''ble Supreme Court that:

In the absence of any material change justifying the Department to take a different view from that taken in earlier proceedings, the question of the exemption of the assessee appellant should not have been reopened.

Strictly speaking, res judicata does not apply to income tax proceedings. Though, each assessment year being a unit, what was decided in one year might not apply in the following year; where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

10. The Hon''ble Supreme Court in the case of Parashuram Pottery Works Co. Ltd. Vs. Income Tax Officer, Circle I, Ward A, Rajkot, stated that:

At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce, repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity.

Assessments are certainly quasi-judicial and these observations equally apply.

We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

11. In view of above, it is evident that the facts of the earlier years are relevant for the assessment year under consideration.

12. Further, it may be mentioned that the ratio laid down in the case of Commissioner of Income Tax Vs. Sahu Enterprises Pvt. Ltd., is not applicable in the instant case. In that case, the loans were taken without interest by the directors/partners for their personal use. The said amount was never used for the purpose of business. The loan was borrowed on interest from the market. But, in the instant case, the amount was used for the purpose of business and interest was allowed by the assessing officer. The only dispute is whether the rate of interest is excessive or riot.

13. Moreover, in the instant case, in the past, the Department has accepted the payment of interest @ 23 per cent. During the assessment year under consideration, no new loan was raised and it were old loans. Moreover, the AO cannot wear the shoes of the businessman. The yardstick will have to be seen from the businessmans point of view, as observed in the case of Commissioner of Income Tax, Bombay Vs. Walchand and Co. Private Ltd., as well as in the case of Voltamp Transformers P. Ltd. Vs. Commissioner of Income Tax, Gujarat-I,

14. In view of above discussion, we And no reason to interfere with the impugned order passed by the Tribunal, which is hereby sustained along with the reasons mentioned therein.

15. The answer to the substantial questions of law is in favour of the assessee and against the Revenue.

16. In the result, both the appeals filed by the Department are dismissed.