

(2012) 05 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : ITA No's. 222 of 2004, 12 and 13 of 2005 and 924 of 2008

CIT

APPELLANT

Vs

Oswal Spinning and Weaving Mills Ltd.

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Income Tax Act, 1961 — Section 260A, 35, 35A, 36, 43

Citation : (2012) 05 P&H CK 0146

Hon'ble Judges : Gurmeet Singh Sandhawalia, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Savita Saxena, for the Appellant; H.O. Arora and Rajiv Sharma, for the Respondent

Final Decision : Dismissed

Judgement

1. This order shall dispose of Income Tax Appeal Nos. 222 of 2004, 12 and 13 of 2005 and 924 of 2008 as learned counsel for the parties are agreed that identical facts and questions of law are involved in all these appeals. However, facts are being taken from IT Appeal No. 12 of 2005. IT Appeal No. 12 of 2005 has been preferred by the Revenue u/s 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 30-1-2004 passed by the Tribunal, Chandigarh Bench B, Chandigarh in ITA No. 826/Chd/1998, for the assessment year 1994-95. It was admitted for determination of following substantial question of law:

Whether the Tribunal was correct in law in holding that the value of a capital asset would be notionally enhanced due to foreign exchange fluctuation at the end of the each financial year and not at the time of payment during the year ?

2. Briefly, the facts as narrated in IT Appeal No. 12 of 2005 may be noticed. For the assessment year 1994-95, the respondent-assessee filed its return of income on 30-11-1994 declaring total loss of Rs. 7,59,30,730. The assessee derived its income from manufacturing of Vanaspati, textile, solvent, steel tube and cotton

products. During the assessment proceedings, the assessing officer observed that the assessee had raised loans in foreign currency for the purchase of machinery. The amount of loan payable in the foreign currency had gone up due to fall in the value of Indian rupee. As a result, the assessee added the enhanced payment to the value of machinery and claimed depreciation thereon. The assessing officer rejected the claim vide order dated 21-3-1997, Annex. A.1 on the ground that the enhanced amount had not been paid and the assessee would be entitled to claim depreciation only when the additional liability of loan is actually paid. Feeling aggrieved, the assessee filed an appeal before the Commissioner (Applets). Vide order dated 29-5-1998, Annex. A.2, the Commissioner (Applets) upheld the order passed by the assessing officer. However, on the request of the assessee, the Commissioner (Applets) rectified the order by referring to the provisions of section 43A of the Act, which was amended w.e.f. 1-4-2003 by Finance Act, 2002 and allowed the claim of the assessee. Being unsatisfied with the order passed by the Commissioner (Applets), the Revenue filed second appeal before the Tribunal. Vide order dated 30-1-2004, Annex. A.3, the Tribunal dismissed the appeal and upheld the order of the Commissioner (Applets) holding that the provisions of section 43A of the Act had been amended w.e.f. 1-4-2003 whereas the order in question related to assessment year 1994-95. The Tribunal confirmed the order of Commissioner (Applets) allowing the claim of depreciation on the enhanced cost of capital asset due to change in the value of Indian rupee. Hence this appeal by the Revenue.

3. Learned counsel for the Revenue submitted that unless the amount was actually paid on account of exchange rate fluctuation by the assessee, benefit of the same should not have been allowed to the assessee as has been done by the Tribunal. Reliance was placed on Apex Court decisions in Commissioner of Income Tax, Madras Vs. Lucas T.V.S. Ltd. Padi Chennai, Asstt. Commissioner of Income Tax, Vadodara Vs. Elecon Engineering Co. Ltd., and Karnataka High Court in CIT v. Wipro Finance Ltd. (2010) 325 ITR 672 (Kar). It was submitted that section 43A of the Act was amended by Finance Act, 2002 w.e.f. 1-4-2003 which was clarificatory in nature and, therefore, the same was applicable to assessment years prior thereto as well.

4. On the other hand, learned counsel for the assessee besides supporting the order passed by the Tribunal relied upon Apex Court judgment in Commissioner of Income Tax, Delhi Vs. Woodward Governor India P. Ltd., , this Court in Commissioner of Income Tax Vs. Arihant Cotsyn Ltd.,) and Century Enka Ltd. Vs. Assistant Commissioner of Income Tax,

5. Section 43A of the Act was inserted by Finance (No. 2) Act, 1967 w.e.f. 1-4-1967. At the relevant time, it read thus:

43A. Special provisions consequential to changes in rate of exchange of currency-

(1) Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset from a country outside India for the

purposes of his business or profession and, in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset (being in either case the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability aforesaid is so increased or reduced during the previous year shall be added to, or, as the case may be, deducted from, the actual cost of the asset as defined in clause (1) of section 43 or the amount of expenditure of a capital nature referred to in clause (iv) of sub-section (1) of section 35 or in section 35A or in clause (ix) of sub-section (1) of section 36, or, in the case of a capital asset (not being a capital asset referred to in section 50), the cost of acquisition thereof for the purposes of section 48, and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset as aforesaid.

Explanation 1:

6. The scope of the aforesaid provision was succinctly analysed by the Apex Court in *Woodward Governor India (P) Ltd.s* case (supra) as under:

33. As stated above, what triggers the adjustment in the actual cost of the assets, in terms of unamended section 43A of the 1961 Act is the change in the rate of exchange subsequent to the acquisition of asset in foreign currency. The section mandates that at any time there is change in the rate of exchange, the same may be given effect to by way of adjustment of the carrying cost of the fixed assets acquired in foreign currency. But for section 43A which corresponds to para 10 of AS-11 such adjustment in the carrying amount of the fixed assets was not possible, particularly in the light of section 43(1). The unamended section 43A nowhere required as condition precedent for making necessary adjustment in the carrying amount of the fixed asset that there should be actual payment of the increased/decreased liability, as a consequence of the exchange variation. The words used in the unamended section 43A were for making payment and not on payment which is now brought in by amendment to section 43A vide Finance Act, 2002.

7. In order to appropriately adjudicate the controversy, the amendment brought about to section 43A of the Act by Finance Act, 2002 effective from 1-4-2003 may also be noticed, which reads thus:

43A. Notwithstanding anything contained in any other provision of the Act, where an assessee has acquired any asset in any previous year from a country outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange during any previous year after the acquisition of

such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency (as compared to the liability existing at the time of acquisition of the asset) at the time of making payment.

(a) towards the whole or a part of the cost of the asset; or

(b) towards repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset along with interest, if any, the amount by which the liability as aforesaid is so increased or reduced during such previous year and which is taken into account at the time of making the payment, irrespective of the method of accounting adopted by the assessee, shall be added to, or, as the case may be, deducted from--....

8. According to amended section 43A of the Act, any addition to and deduction from the actual cost of a capital asset resulting from exchange fluctuation shall be only at the time of actual discharge of the liability and not to be adjusted with reference to amount payable and outstanding at the end of each year on the basis of mercantile system of accounting. It has further been provided that method of accountancy being followed by the assessee would not be relevant. Any adjustment which has already been allowed as a deduction prior to 1-4-2003 shall not be allowed again on account of exchange fluctuation at the time of actual payment.

9. The Apex Court in Woodward Governor India (P) Ltd.s case (supra) dealt with similar issue for years prior to the assessment year 2003-04 and held that the amendment of section 43A by the Finance Act, 2002 w.e.f. 1-4-2003 would be applicable prospectively with the following observations:

34. Lastly, we are of the view that the amendment of section 43A by the Finance Act, 2002 w.e.f. 1-4-2003 is amendatory and not clarificatory. The amendment is in complete substitution of the section as it existed prior thereto. Under the unamended section 43A adjustment to the actual cost took place on the happening of change in the rate of exchange whereas under the amended section 43A the adjustment in the actual cost is made on cash basis. This is indicated by the words at the time of making payment. In other words, under the unamended section 43A, actual payment was not a condition precedent for making necessary adjustment in the carrying cost of the fixed asset acquired in foreign currency, however, under amended section 43A w.e.f. 1-4-2003; such actual payment of the decreased/enhanced liability is made a condition precedent for making adjustment in the carrying amount of the fixed asset. This indicates a complete structural change brought about in section 43A, vide the Finance Act, 2002. Therefore, the amended section is amendatory and not clarificatory in nature.

10. As noticed above, the Hon"ble Apex Court in Woodward Governor India (P) Ltd.s case (supra) held that amendment to section 43A by Finance Act, 2002 w.e.f. 1-4-2003 was amendatory and not clarificatory. In other words, it would mean that it shall be prospectively effective from 1-4-2003 and the cases

relating to earlier assessment years would be governed by unamended section 43A of the Act. Once that is so, the present appeals which relate to the assessment years 1994-95, 1995-96, 1996-97 and 2002-03, the same would be governed by the unamended provisions of section 43A of the Act. It is held that the assessee was entitled to exchange rate fluctuation in respect of foreign currency in the assessment years in question as it was following mercantile system of accountancy.

11. Adverting to the judgments relied upon by learned counsel for the Revenue, suffice it to notice that the judgments relied upon in Lucas T.V.S. Ltd.s case (supra), Elecon Engineering Co. Ltd.s case (supra) and Wipro Finance Ltd.s case (supra) do not advance the case of the Revenue being on individual fact situation involved therein.

12. Accordingly, the substantial question of law raised in all the appeals is answered against the Revenue. Consequently, the appeals are dismissed.