(2013) 01 GUJ CK 0089

In the Gujarat High Court

Case No : Tax Appeal No. 587 of 2012

CIT APPELLANT

Vs

Sambhav Media Ltd. RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) 01 GUJ CK 0089

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Judgement

1. Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal (the Tribunal for short) dated 2.3.2012 raising following questions for our consideration:

1. Whether the Appellate Tribunal is right in law and on facts in setting aside the matter of disallowance of Rs. 48,62,405 being the loss claimed by the assessee as business loss to the file of AO?

2. Whether the Appellate Tribunal is right in confirming the decision of Commissioner (Appeals) in deleting the disallowance of bad debts amounting to Rs. 54,59,000?

3. Whether the Appellate Tribunal is right in confirming the decision of Commissioner (Appeals) in deleting the disallowance of Rs. 3,61,22,730 made on account of loss on wind mills and change in the method of valuation of stock?

2. Question No. 1 pertains to claim of Rs. 48.62 lacs made by the assessee towards loss for compensation paid to one Mekor Company. The assessing officer disallowed such claim. Commissioner (Appeals), however, reversed the findings of the assessing officer. On further appeal by the Revenue, the Tribunal remanded the issue for fresh consideration by the assessing officer. The Tribunal noted the assessees contention that such claim was not initially made, but it was raised in the revised return filed on account of Mekor filing a suit before the

Bombay High Court which was admitted. The Tribunal required a fresh consideration by the assessing officer made following observations:

However, the learned counsel for the assessee could not state as to whether the claim of ''Mekor'' was decided in favour of the ''Mekor'' and against the assessee company and in which year the actual payment was made by the assessee on account of non-fulfilment of the contract for purchase of imported news print and whether the claim in the subsequent year was made by the assessee company. In these facts of the case, we hold that it shall be in the interest of justice to set aside this issue to the file of the assessing officer with direction to verify the facts and allow the claim of the assessee in the assessment year 2000-01 in appeal before the Tribunal provided, any similar claim has not been made by the assessee in any of the subsequent assessment years and the claim of the ''Mekor'' has been allowed by the Hon''ble Bombay High Court and the assessee has in fact complied with and has paid the compensation subsequently on account of loss for non-fulfilment of the contract for purchase of imported news print. We direct accordingly.

3. When the Tribunal has taken care to remand the issue to the assessing officer to examine all relevant aspects of the matter, such as, whether the payment was actually made, whether Bombay High Court had allowed such claim and whether the assessee had made such a claim for any subsequent years, to our mind, there is no reason to interfere.

4. With respect to question No. 2, we notice that the assessee had claimed a sum of Rs. 54.59 lacs by way of bad debts. The assessing officer disallowed such claim. Commissioner (Appeals) as well as the Tribunal reversed the view of the assessing officer. The Tribunal in particular, made following observations:

We have considered rival submissions and perused the orders of the assessing officer and the Commissioner (Appeals). We find that the debts pertained to non-trade parties have not been allowed by the Commissioner (Appeals) as bad debts. It is not necessary to take any legal steps in order to justify the claim of the bad debts. The amount has been written off in the books of account of the assessee and this fact has not been disputed by the Revenue. The Commissioner (Appeals) has passed a well reasoned order while allowing the claim of the assessee. The Commissioner (Appeals) has given a finding that the assessee is in the business of dealing in shares and securities and finance and in business various debts had arisen in the past. In these facts of the case, we find that there is no mistake in the order of the Commissioner (Appeals) on this issue, which is confirmed and the Ground No. 2 of the Revenues appeal is dismissed.

We find that the Tribunal committed no error. The assessee having bad debts written off in the books of account, it was thereafter not necessary any further to establish that bad debt had in fact become bad.

5. With respect to question No. 3, we notice that the assessee had claimed Rs. 3.61 crores (rounded off) on account of loss on windmills. The Commissioner

(Appeals) allowed such claim reversing the view of the assessing officer. The Tribunal further considered the issue at considerable length and dealt with all the objections of the Revenue. It was noticed that the assessee company in the annual report of the Board of Directors had noted that the Government was not coming out with long term policy for development of non-conventional energy sources which prompted the Company to reduce the energy division during the year. The machines were also seized by the Bank having a first charge under the order of the Bombay High Court. Considering such aspects, finding that the title of the machines was also in doubt, the Company decided to write off the same. Revenues objection that the same was a capital loss was rejected observing that windmills were treated as stock in trade in the assessees project. The Revenues contention that the assessee had altered its method of valuation was also dealt with observing that the assessee found that windmill had no realizable value and therefore its valuation was changed to adopt to the cost or its realizable value whichever is less. Such method was found acceptable by different High Courts. Here also, the Tribunal having considered all relevant aspects of the matter and having come to the conclusion that the assessee was justified in writing off the investment in the windmills as bad debt.

No question of law arises. In the result, Tax Appeal is dismissed.

