(2011) 02 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal No. 472 of 2008 A.Y. 1995-96

CIT APPELLANT

Vs

Shahbad Co-Operative Sugar Mills Ltd. RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:
Income Tax Act, 1961 — Section 260A, 32

Citation : (2011) 02 P&H CK 0025

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—Since Registry has not been able to send the file on account of fire in the court premises, learned counsel for the

Revenue has furnished copy of paper book which is taken on record. We proceed to decide the matter after hearing learned counsel for the

parties.

2. This appeal has been preferred by the Revenue u/s 260A of the IT Act, 1961 (""the Act"") against order dt. 3rd Oct., 2007 passed by the

Tribunal, Chandigarh Bench A, Chandigarh in ITA No. 20/Chd/2007, for the asst. yr. 1995-96, claiming following substantial questions of law :

(i) Whether on the facts and circumstances of the case, the learned Tribunal was right in law in allowing the depreciation on the new plant and

machinery which was not put to use during the year under consideration ?

(ii) Whether on the facts and circumstances of the case, the order passed by learned Tribunal is perverse as the evidence available on record has

not been considered by the Tribunal ?

(iii) Whether the learned Tribunal is right in law in allowing depreciation despite the fact that the assessee failed to fulfill the conditions contained in

section 32 of the IT Act, 1961 ?

3. The assessee is a co-operative society and claimed depreciation on the machinery which was not actually used but was kept ready for use. The

AO did not allow the claim for depreciation on the ground that machinery had not been actually put to use. On appeal, the CIT(A) upheld the

order of the AO but the Tribunal accepted the plea of the assessee as follows :

With respect to balance, we find that plea of the assessee all alone has been that the plant and machinery has been kept ready for production and

in fact trial run was carried out on 28th March, 2005 onwards. In support, apart from other evidences, the assessee produced a log-book which

showed hour to hour working of the machinery and such log-books were maintained by the assessee regularly for old plant and machinery as well

as the new plant and machinery installed. We find that the statements made by the chief engineer of the assessee were on the basis of such records.

On the strength of such evidence, the assessee had argued that it being an entity, which is headed by Government official as its managing director,

there were no reasons to doubt the bona fides of the claim. In this connection we find that the CIT(A) has found discrepancies in the log'' books

produced by the assessee. According to the CIT(A) the log-book related to new boiler and turbine etc. had nothing relating to production from the

expanded plant is produced/filed. According to the CIT(A), the running of boilers and turbines cannot be taken as an evidence relating to readiness

of the plant and machinery for the purpose of production. We have considered the entire gamut of facts and find that the inference drawn by the

CIT(A) is misplaced. Firstly, the excise records produced by the assessee duly show an enhanced crushing/production of molasses from the date

when the assessee claimed to have put the new plant and machinery into operation i.e., from 28th March, 1995 onwards. This is evident from the

copy of the excise register placed at p. 11 of the paper book. Apart from the aforesaid, as a circumstantial evidence, we find that the assessee has

taken credit for the purchase of new plant and machinery in the excise record and availed modvat credit for the same. The entry of such credit

made in excise records namely RG-23 is evident from the copies placed at pp. 7

to 10 of the paper book. After considering the aforesaid in the

face of other material, we are inclined to uphold the plea of the assessee that the plant and machinery in question was at least in the state of

readiness for production and therefore, it could be said to have, been put to use for the purposes of section 32 of the Act. As a matter of passing,

we may mention here that the trial production also cannot be effected unless the plant is ready to be put to use and this position was not disputed

by the AO even in the original proceedings.

4. We have heard learned counsel for the parties.

5. Learned counsel for the revenue submits that in absence of actual use, the claim for depreciation could not be allowed. This plea cannot be

accepted. The Tribunal has categorically held that the plant and machinery was kept in the state of readiness for production. Moreover, in the case

of the assessee itself we have approved the view of the Tribunal in order dt. 17th Dec., 2010 in ITA. No. 515/2008, CIT v. Shahbad Co-op.

Sugar Mills Ltd. as follows :

10. We also find that expression used in section 32 of the Act has been judicially interpreted to include machinery kept for use, even if the same

was not actively used. Passive user has also been held to be user where it may be necessary for business of the assessee to keep the machinery

ready'' for use. Reference may be made to the judgment of Delhi High Court in CIT v. Refrigeration & Allied Industries Ltd. (2001) 247 ITR 12

(Del). Therein reliance was placed on the following judgments :

(i) Machinery Manufacturers Corporation Ltd. Vs. Commissioner of Income Tax, Bombay,

(ii) COMMISSIONER OF INCOME TAX, BOMBAY Vs. VISWANATH BHASKAR SATHE.,

(iii) COMMISSIONER OF Income Tax, BIHAR AND ORISSA Vs. DALMIA CEMENT LTD.,

(iv) The Liquidators of Pursa Limited Vs. Commissioner of Income Tax, Bihar,

(v) Commissioner of Income Tax, Bombay City-III Vs. Bombay State Transport Corporation,

(vi) G.R. Govindarajulu Naidu and Another Vs. Commissioner of Income Tax,

(vii) Commissioner of Income Tax, Gujarat-II Vs. Elecon Engineering Co. Ltd., and

(viii) Commissioner of Income Tax Vs. Geo Tech Construction Corporation, Reference was also be made to dictionary meaning of the word depreciation as also the object of allowing depreciation. In the present case, the

machinery in question is vapour cell, juice clarifier and fly ash arrester paid pweitier which according to the assessee had to be kept ready for use

for its business expediency. Stand of the assessee is that it resulted in increase of capacity of the plant and that on account of technical justification

for the said machinery, items of the machines were installed. Even though the auditors may not have accepted the said stand, the assessee was

entitled to free play in joints in taking a decision to install the machinery if in its view the same was necessary for its business. If the assessee was to

install such a machinery on its bona fide business consideration, mere absence of proof of actual use thereof was not enough to deny the claim! for

depreciation. Accordingly, we do not find any ground to interfere with the finding of the Tribunal, holding that the assessee was entitled to

depreciation on the machinery, as claimed.

6. In view of above, questions! of law raised in this appeal are decided against the Revenue and in favor of the assessee.

7. Accordingly, the appeal is dismissed.

