
(2013) 01 GUJ CK 0014
In the Gujarat High Court
Case No : Tax Appeal No. 507 of 2012

CIT

APPELLANT

Vs

Shree Rama Multi Tech Ltd.

RESPONDENT

Date of Decision : 28-01-2013

Acts Referred:

Citation : (2013) 01 GUJ CK 0014

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) dt. 6-1-2012 raising following questions of law for our consideration:

1. Whether the Tribunal is right in rejecting the revenues appeal filed against the decision of the Commissioner (Appeals) in deleting the disallowance of claim of depreciation on tangible assets, being software?

2. Whether the Tribunal is right in deleting the addition made on account of bogus purchase?

3. Whether the Tribunal is right in deleting the addition made on account of disallowance of interest u/s 36(1)(va) of the Act?

4. Whether the Tribunal is right in deleting the addition made on account of disallowance of loss on sale of raw materials?

5. Whether the Tribunal is right in deleting the addition made on account of disallowance of service charges?

6. Whether the Tribunal is right in not adjudicating the ground challenging the decision of the Commissioner (Appeals) in directing to allow Rs. 12,84,047?

2. We may take-up the questions seriatim. Regarding question No. 1, counsel for the revenue agreed that such a question was considered in Tax Appeal No. 506 of

2012 and such question was rejected making following observations:

As far as the question No. 1 is concerned, the Tribunal by making following observations remanded the matter to the assessing officer made in the Tax Appeal No. 509, adjudicated today:

The learned Commissioner (Appeals) on proper examination of evidences and material rightly came to the conclusion that software is intangible asset and was loaded in the system of machine. The learned Commissioner (Appeals) also rightly held that installation of software could be checked by the technical person whether it was loaded in the system or not. Therefore, the finding in the survey cannot be relied upon. Even the assessing officer has accepted the fact that some of the software were developed locally and installed in the system. The finding of fact recorded by learned Commissioner (Appeals) find support from the valuation report of assets prepared by Dalal Mott Macdonald which was found in survey which indicated that software developed and installed by the assessee in the system. The assessee produced all the vouchers and receipt for the same which was also examined by learned Commissioner (Appeals). Nothing is produced before us during the course of arguments to rebut the findings of learned Commissioner (Appeals). Considering the facts and circumstances of the case in the light of the material on record, we do not find any justification to interfere with the order of the learned Commissioner (Appeals) in allowing depreciation in respect of all the software purchased and installed during the year.

This issue had also arisen in Tax Appeal No. 509 of 2012. We have not deemed it fit to interfere with the findings of the Tribunal in view of the fact that it is only a remand to the assessing officer. This issue also meets similar fate and therefore, no interference is required.

3. Question No. 2 was considered in Tax Appeal No. 509 of 2012 and not entertained. Following observations are relevant:

4. With respect to question No. 2, the Tribunal set aside the view of the assessing officer as confirmed by the CIT (Appeals) in the following manner:

We have considered the rival submissions and do not find justification even to sustain part addition. It is not in dispute that search was carried out by central excise department prior to start of the financial year in appeal. The financial year starts from 1-4-2002 and would end on 31-3-2003 for assessment year 2003-04 under appeal. The search is conducted on 15-2-2002; therefore, there is no question of recovery of any incriminating material against the assessee in the search for the assessment year 2003-04. The authorities below merely on going through the findings in earlier year followed the order for holding bogus purchases made by the assessee. The assessee explained before the learned Commissioner (Appeals) that no sufficient opportunity was given to produce the documents on this issue, therefore, additional documents were filed at the appellate stage on which remand report from the assessing officer was called for, but the assessing officer has not given any finding against the assessee based on

the additional evidences. The concern parties have furnished details and also filed confirmations even as per findings of the assessing officer. Nothing is brought on record if any adverse findings were given by central excise authorities against the assessee for assessment year under appeal. The learned Commissioner (Appeals) in substance accepted the claim of the assessee but merely on presumption and assumption observed that it is likely that the assessee would continue to receive bills without actual delivery. The findings of learned Commissioner (Appeals) have no basis and have not been supported by any evidence or material on record. In the absence of any material on record against the assessee, we do not find any justification to sustain even part addition against the assessee. We accordingly, set aside the order of the learned Commissioner (Appeals) in confirming part addition and sustain the order in deleting the addition. In the result, ground No. 4 of the appeal of the assessee is allowed and ground No. 4 of the appeal of the revenue is dismissed.

5. Having heard learned counsel for the revenue and having perused the orders on record, it becomes abundantly clear that the entire issue is based on appreciation of evidence. The Tribunal having regard to the evidence and material on record was of the opinion that the addition was not justified. It was observed that in absence of any material against the assessee, such addition could not have been made.

6. Since the entire issue is based on facts and no perversity is pointed out in the conclusion of the Tribunal, such question is also not required to be considered.

4. Regarding question No. 3, counsel for the respondent rightly pointed out that such issue is squarely covered by the Supreme Court in case of Commissioner of Income Tax Kolkata-III Vs. Alom Extrusions Limited, . In fact, parties before the Tribunal agreed to such a position. This question is also therefore, not required to be considered.

5. Regarding question No. 4, it was pointed out that similar question was considered but not entertained in Tax Appeal No. 506 of 2012. Following observations were made:

As far as the question No. 4 is concerned, the Tribunal deleted the addition made on account of disallowance of loss on sale of raw materials. It appears that the assessee had provided the requisite details elaborately before the Commissioner (Appeals) and based on that the remand report was called for from the assessing officer. It was noted by the Tribunal that the assessee suffered a loss and this basic fact was not even challenged by the assessing officer in the remand report submitted to the Commissioner (Appeals). In absence of any evidence to rebut the factum of respondent having sustained loss, the Tribunal thought it fit not to interfere with the findings of the Commissioner (Appeals).

This issue is too essentially & predominantly based on the facts and it can be noted that sufficient reasonings have been given by the Tribunal to arrive at such conclusion. In absence of any question of law arising, this issue requires no

indulgence.

6. Regarding question No. 5 which concerns disallowance of the service charges, it can be noted from the record that Commissioner (Appeals) was approached against the disallowance of Rs. 38,24,946. This service charge payment was made to M/s. Applitech Solution Ltd., associated concern of the respondent-assessee. The Commissioner (Appeals), on the ground that the depreciation had been allowed on the software in the assessment year 2002-03 by it and similar maintainable expenses were held to have been incurred by the respondent-assessee allowed by it in the year 2003-04, directed the assessing officer to allow the service charge payment made to the associated concern.

7. When challenged before the Tribunal by the revenue, on noting that in the year 2003-04, similar issue was considered by it where it had dismissed such ground on appeal of the revenue, it followed its earlier years stand. We have been intimated that though the challenge was made by the revenue of the order of the Tribunal rendered in case of the respondent-assessee for the assessment year 2003-04; this ground was not challenged.

8. We see no reason to interfere with the concurrent findings of both the authorities following its earlier years stand which had never been challenged by the revenue. Even otherwise, it does not appear to be any question of law arising for this Court to entertain this issue.

9. With respect to question No. 6, we notice that revenues grievance is that certain grounds, though raised, were not dealt with by the Tribunal. However, if that be so, it is always open for the revenue to file an application for rectification by the Tribunal which, if so done within the time permitted under the law. We are sure that the tribunal will examine in accordance with law.

10. In the result, tax appeal is dismissed.