(2014) 04 CAL CK 0122

In the Calcutta High Court

Case No : ITA No. 128 of 2001

C.I.T. APPELLANT

Vs

The Ganga Rope Co. Ltd. RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Citation : (2014) 04 CAL CK 0122

Hon'ble Judges : Sudip Ahluwalia, J;G.C. Gupta, J

Bench : Division Bench

Advocate : Smita Das De, Advocate for the Appellant; Anupa Banerjee, Advocate for the Respondent

Judgement

1. The only question argued by Ms. Smita Das De, learned advocate appearing for the appellant is the question No. 1 which reads as follows:

Whether, on the facts and in the circumstances of the case, the order of the Income Tax Appellate Tribunal allowing deduction of payment of Rs. 1,08,41,068 on retrenchment of workmen is perverse on facts and erroneous in law.

2. The Assessing Officer refused to treat this expenditure of a sum of Rs. 1,08,41,068/- as revenue expenditure on the ground that:

The records show that the assessee did never revive operation or manufacturing during this year or in any other subsequent years. In subsequent year the assessee earned income from rent of warehousing and sale of accumulated old stock. It has no relation to the manufacturing unit where all the 193 (one hundred and ninety three) workers were retrenched and the factory was fully closed. Case of the assessee is fully identical with the case of Binani Printers (P.) Ltd. Vs. Commissioner of Income Tax, In the circumstances, a reasonable conclusion that can be drawn is that the compensation claimed to have been paid to the workmen was in connection with the complete closure of the factory and manufacturing unit of the assessee Co. Improvement/development or increase in financial viability was never the purpose of the Co.

3. Aggrieved by the order of the Assessing Officer, an appeal was preferred by the assessee.

4. The C.I.T. appeal reversed the order of the Assessing Officer, holding inter alia as follows:

I am accordingly inclined to the view that the essential element in establishing that there had been cessation of business of the appellant company during the accounting year relevant to the assessment year 1992-93 is found to be absolutely wanting. Facts on record, mode of computation of total income in assessment and treatment of the accounts and the different items of expenditure run counter to the conclusion drawn in rejecting claim for allowance of deduction in respect of payment of compensation to workers under the Voluntary Separation scheme. Accordingly it is held that there is no case for disallowance of any part of the expenditure of Rs. 1,08,41,068/-.

5. The revenue unsuccessfully challenged the order before the learned Tribunal which was dismissed with the following observations:

We agree with the contention of the CIT (A) that the expenses towards payment of VSB made to the workers was incurred not only in connection with the existing business of the assessee but also during the continuance of such business and not on the closure of such business. Hence, the two judgment of the Calcutta High Court in the case of Binani Printers (P) Ltd. (supra) and the Madras High Court in the case of M. Seshadri Iyengar & Sons (supra) would not apply to the facts of the present case as in both these cases the respective businesses had come to complete closure, which is not the case here. Ultimately therefore, we uphold the order of the CIT (A) in directing the AO to allow the entire retrenchment benefits of the order Rs. 1,08,41,068/-.

6. Aggrieved by the order of the learned Tribunal, the present appeal was preferred.

7. Ms. Das De did not dispute the fact that the payments were not made by the assessee after the business had been closed down. As a matter of fact, in paragraph-9 of the impugned order, the learned Tribunal has recorded as follows:

At the stage of hearing of this departmental appeal before us, the Ld. counsel for the assessee, besides repeating the arguments taken up before the CIT (A), had also drawn our attention to the order of the ITAT passed in the assessee''s case for the assessment years 1994-95, 1995-96 and 1996-97 vide order dated 16.12.97 in ITA No. 882/Cal/98, ITA Nos. 659 & 660/Cal/99, wherein the Tribunal held that the manufacturing business of the assessee even continued in those subsequent years also.

8. There is as such dependable evidence to show that the business of the assessee was continuing. Whether in the backdrop of the aforesaid factual situation, payments made by the assessee to his workers by way of compensation can be treated to be an expenditure otherwise than in the nature

of revenue, is the sole question.

9. Ms. Anupa Banerjee, learned advocate who was appointed amicus curiae by us drew our attention to a Division Bench judgment of this Court in the case of Commissioner of Income Tax Vs. Assam Oil Co. Ltd., wherein the question of determination was as follows:

Whether, on the facts and in the circumstances of the case, the payment of Rs. 30,96,805 as retrenchment compensation to the employees of the company could be allowed as a deduction by holding it to be a revenue expenditure?

10. The aforesaid question was answered by the Division Bench as follows:

It is conclusively established that the assessee''s business in which the disputed payments were made did not come to a closure and that the assessee made such payments in order to effect economy and rationalisation of its personnel. No asset of enduring nature came into existence by reason of the payments though benefits accrued to the assessee thereunder which would continue not only for one year but in future years. But this benefit cannot be related to any asset as such.

11. Ms. Banerjee also drew our attention to a Division Bench judgment of the Karnataka High Court in the case of The Commissioner of Income Tax Vs. The Margarine and Refined Oils Company Limited, wherein the Division Bench after considering various judgments including the judgments of the Supreme Court held as follows:

An assessee can carry on business personally by using the commercial asset or he may do so by letting it out to somebody else and the income by way of rent would constitute business income. The yield of income by a commercial asset irrespective of the manner in which the assets are exploited by the owner of the business would be income from business. Therefore in such circumstances the amount of retrenchment compensation paid would be an expenditure expended wholly and exclusively for the purpose of business and the said expenditure shall be allowed to be deducted in computing the income chargeable under the head "Profits and gains of business or profession" u/s 37(1) of the Act.

12. Ms. Banerjee submitted that she has cited this judgment only to take care of a passing remark made by the Assessing Officer that after closing down the manufacturing activity the assessee had started business of letting out the factory for warehousing purpose. She contended that even in that case, although this was not the case of the revenue either before the C.I.T. or before the Tribunal, it cannot be said that the business of the assessee had come to an end.

13. The submissions made by Ms. Das De have thus been duly dealt with and the question formulated above, is answered in favour of the assessee. Needless to point out that in view of the answer given to the question formulated above, it has to be held that the interest paid by the assessee for the purpose of borrowing money for payment to the workers, would also amount to a business

expenditure.

14. We record our deep sense of appreciation for the services rendered by Ms. Banerjee. It is recorded that all other questions indicated in the order admitting the appeal, were given up by Ms. Das De.