(2013) 09 AHC CK 0077

In the Allahabad High Court

Case No : Income Tax Appeal No. 187 of 2013

Commissioner Income Tax and Another APPELLANT

Vs

Radico Khaitan Ltd. RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2014) 360 ITR 462

Hon'ble Judges : Surya Prakash Kesarwani, J;Sunil Ambwani, J

Bench : Division Bench

Advocate : A.N. Mahajan and D. Awasthi, for the Appellant; R.S. Agrawal, for the Respondent

Judgement

1. We have heard Sri Dhananjay Awasthi for the appellant-Department. Shri Bhoopesh Jain and Sri R.S. Agrawal appears for the respondent-assessee. This income tax appeal u/s 260A of the income tax Act, 1961, ("the Act") is directed against the judgment and order of the income tax Appellate Tribunal (Delhi Bench "E", New Delhi), dated April 8, 2005, in I.T.A. Nos. 5323/Del/97 and 5195/Del/97 for the assessment year 1993-94.

2. The appeal was admitted on questions Nos. 1, 2, 3, 5 and 6, made in the memo of appeal as questions of law for consideration, which are as follows:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenses and depreciation on guest house were allowable and the provisions of section 37(4) of the Act, were not attracted ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law holding that deduction u/s 80I was allowable on gross total income without reducing the deduction u/s 80HH of the Act ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the effect of entries passed in subsequent years can be given in preceding year although such deduction has not been claimed in the

return of income ?

(5) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in treating the interest income as business income instead of income from other sources ?

(6) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in treating various capital expenses as revenue expenses ?

3. On question No. 1, the parties agree that it is covered by the judgment of the Supreme Court in Britannia Industries Ltd. Vs. Commissioner of Income Tax, West Bengal, Kolkata and Another, , in which it was held that maintenance expenses not allowable in respect of guest house. In the said case, the Supreme Court observed in paragraph 30 as follows (page 558):

The only question which we are called upon to consider in the instant case is whether the expression ''premises and buildings'' referred to in sections 30 and 32 and used for the purposes of the business or profession would include within its scope and ambit the expression ''residential accommodation including any accommodation in the nature of guest house'' used in sub-sections (3), (4) and (5) of section 37 of the Act. While the two expressions can be similarly interpreted, a distinction has been sought to be introduced for the purposes of section 37 by specifying the nature of building to be a guest house. In our view, the intention of the Legislature appears to be clear and unambiguous and was intended to exclude the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purposes of a guest house of the nature indicated in sub-section (4) of section 37. When the language of a statue is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give it a meaning which would cause violence to the provisions of the statute. If the Legislature had intended that deduction would be allowable in respect of all types of buildings/accommodations used for the purposes of business or profession, then it would not have felt the need to amend the provisions of section 37 so as to make a definite distinction with regard to buildings used as guest houses as defined in sub-section (5) of section 37 and the provisions of sections 31 and 32 would have been sufficient for the said purpose.

Question No. 1 is thus decided in favour of the Revenue and against the assessee.

4. On question No. 2, both the parties agree that the issue is covered by the judgment of this court in Income Tax Appeal No. 182 of 2000 Commissioner of Income Tax and Another Vs. Hindustan Pipe Udyog Ltd., . This court followed the judgment of the Supreme Court in Joint Commissioner of Income Tax Vs. Madideep Engg. and Pkg. India (P.) Ltd., , in which the Supreme Court has held as follows (page 2):

The point involved in the present case is whether sections 80HH and 80I of the income tax Act, 1961, are independent of each other and therefore a new industrial unit can claim deductions under both the sections on the gross total income independently or that deduction u/s 80I can be taken on the reduced balance after taking into account the benefit taken u/s 80HH.

The Madhya Pradesh High Court in J.P. Tobacco Products Pvt. Ltd. Vs. Commissioner of Income Tax, took the view that both the sections are independent and, therefore, the deductions could be claimed both under sections 80HH and 80I on the gross total income. Against this judgment a SLP was filed in this court which was dismissed on the ground of delay on July 21, 2000 (see [2000] 245 ITR (St.) 71). The decision in J.P. Tobacco Products Pvt. Ltd. Vs. Commissioner of Income Tax, was Mowed by the same High Court in the case of CTT v. Alpine Solvex P. Ltd. in I.T.A. No. 92 of 1999 decided on May 2, 2000. SLP against this decision was dismissed by this court on January 12, 2001, (see [2001] 247 ITR (St.) 36). This view has been followed repeatedly by different High Courts in a number of cases against which no special leave petitions were filed meaning thereby that the Department has accepted the view taken in these judgments. See The Commissioner of Income Tax Vs. NIMA Specific Family Trust, ; Commissioner of Income Tax, Jodhpur Vs. M/s. Chokshi Contacts (P) Ltd. Udaipur, ; Commissioner of Income Tax Vs. Amod Stamping, ; Commissioner of Income Tax Vs. Mittal Appliances and Others, ; Commissioner of Income Tax Vs. Rochi Ram and Sons, ; Commissioner of Income Tax Vs. Prakash Chandra Basant Kumar, ; Commissioner of Income Tax Vs. S.B. Oil Industries Pvt. Ltd., ; The Commissioner of the Income Tax-III Vs. S.K.G. Engineering Pvt. Ltd., and The Commissioner of Income Tax Vs. Lucky Laboratories Ltd., .

Since the special leave petitions filed against the judgment of the Madhya Pradesh High Court have been dismissed and the Department has not filed the special leave petitions against the judgments of different High Courts following the view taken by the Madhya Pradesh High Court, we do not find any merit in this appeal. The Department having accepted the view taken in those judgments cannot be permitted to take a contrary view in the present case involving the same point. Accordingly, the civil appeal is dismissed. No costs.

Question No. 2 is thus decided against the Revenue and in favour of respondent-assessee.

5. As far as questions Nos. 3 and 6 are concerned, we find that they do not arise for consideration, from the facts and in the circumstances of the case.

6.On question No. 5, we find that it is covered by the judgment of the court decided inter parties in Commissioner of Income Tax Vs. Radico Khaitan Ltd., in respect of the assessment year 1990-91. In paragraph 24 of the judgment it was held that in respect of interest on the loan advanced to the sister concern, namely, M/s. Rampur International P. Ltd. the assessee has sufficient funds available, and interest was thus arising out of the loan advanced to the sister concern. Paragraph 24 of the judgment is quoted as follows (page 365):

Applying the aforesaid principle to the facts of the present case, we find that the Tribunal has recorded a finding that there were sufficient funds available with the assessee-company in the form of share capital, share application money/reserve and surplus other than the borrowed money for diverting a sum of Rs. 17.19 lakhs. Thus it cannot be said that the amount of loan advanced to the sister concern, namely M/s. Rampur International Private Ltd. was out of the borrowed funds.

Question No. 5, is thus decided in favour of the assessee and against the Revenue.

The income tax appeal is accordingly disposed of. The Department will proceed accordingly.