

(2008) 10 KAR CK 0085

In the Karnataka High Court

Case No : Income Tax A. No. 139 of 2004

Commissioner of Income Tax and Another

APPELLANT

Vs

Tata Lucent Technologies Ltd.

RESPONDENT

Date of Decision : 15-10-2008

Acts Referred:

Income Tax Act, 1961 — Section 30, 31, 32, 37 (4), 37 (5)

Citation : (2009) 318 ITR 110

Hon'ble Judges : K. Sreedhar Rao, J;C.R. Kumaraswamy, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; S. Parthasarathi, for the Respondent

Judgement

K. Sreedhar Rao, J.—The respondent (assessee) filed return for the assessment year 1996-97. The assessee had imported the materials from abroad. There was one transaction towards import of materials for which the assessee had shown the loss of Rs. 1,37,57,730 in respect of unpaid bills on account of fluctuation in the foreign exchange rate (FER). In respect of another transaction of supply of materials, the assessee had disclosed the gain of Rs. 1,08,13,049 towards unpaid bills on account of fluctuation in the foreign exchange rate. In respect of yet another transaction, the assessee had disclosed the loss towards unpaid bills on account of foreign exchange rate fluctuation in a sum of Rs. 69,25,345.

2. The assessee had set off the gain as against the loss in the transaction and disclosed the loss at the rate of Rs. 69,25,345 in one transaction and Rs. 29,44,681 in respect of other transaction. The Assessing Officer accepted the return of the assessee. The Commissioner of Income Tax in a suo motu revision has found that the loss disclosed is in respect of incomplete transaction. The assessee had not paid the outstanding bills and not entitled to deduction towards loss on account of fluctuation in FER. The Appellate Tribunal on appeal set aside the order of the Commissioner of Income Tax confirming the order of the Assessing Officer. The State is in appeal.

3. The following substantial questions of law are formulated for consideration:

(i) Whether the Tribunal was correct in holding that a sum of Rs. 69,25,345 has to be allowed as a loss since the liability had crystalized as on the last date of the financial year when this was not even the case of the assessee especially when the bills were not paid during the assessment year consequently recorded a perverse finding ?

(ii) Whether the Tribunal was correct in holding that a loss of Rs. 29,44,681 had crystalized during the year and, therefore, was an allowable deduction when the assessee itself had admitted before the Commissioner that out of Rs. 1,37,57,730 a sum of Rs. 29,44,681 was allowable deduction especially when the bills were not paid during the assessment year ?

(iii) Whether the Tribunal Was correct in taking into account an hypothetical loss and allowing the same on the basis that the liability had accrued when in fact the bills were raised by the assessee and before the payments were made hypothetical fluctuation was considered as on the last date of the accounting year without there being any actual loss ?

(iv) Whether the Tribunal was correct in holding that a sum of Rs. 8,87,675 incurred by the assessee for maintenance of house on account of payment of rent of Rs. 4,56,000 claim of depreciation of Rs. 37,465 and maintenance of Rs. 3,94,210 cannot be disallowed u/s 37(4) and (5) of the Act as it would amount to substituting the view taken by the Assessing Officer that the same could be allowed under Sections 30, 31, 32, etc., of the Act ?

(v) Whether the Tribunal was correct in holding that the order of the Commissioner was not only prejudicial to the interest of the Revenue but also erroneous ?

4. The facts disclose that the assessee had imported the materials for its business. The part of the value of the materials remain unpaid. Rule 115 of Income Tax Rules permit notional assessment of loss or gain incurred on account of the foreign exchange rate fluctuation as on the specified date, i.e., 31st of March of every year. The assessee according to Rule 115 of the Income Tax Rules, had disclosed notional loss and gain on account of foreign exchange rate fluctuation as on March 31, 1996, which is perfectly is in accordance with law.

5. The assessee had sought for deduction of maintenance of guest house expenditure. The Income Tax law did not permit deduction towards the maintenance of guest house expenditure for the assessment year in question, In that view, the contra finding of the Tribunal in that regard is bad in law, The same is set aside. The appeal is partly allowed in terms indicated.