
(2007) 12 JH CK 0043
In the Jharkhand High Court

Commissioner of Income Tax

APPELLANT

Vs

Composite Tools Company (India) Ltd.

RESPONDENT

Date of Decision : 20-12-2007

Acts Referred:

Income Tax Act, 1961 — Section 143, 154, 260A, 263

Citation : (2009) 221 CTR 294 : (2008) 2 JCR 118

Hon'ble Judges : M.Y. Eqbal, J;D.G.R. Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—This appeal u/s 260A of the Income Tax Act, 1961 is directed against the order dated 15.12.2006 passed by Income Tax Appellate Tribunal, Circuit Bench, Ranchi in I.T.A. No. 297/PAT/20Q5 whereby and where under the Tribunal set aside the order passed in appeal by the Commissioner of Income Tax and affirmed the order passed by the Assessing Authority.

2. We have heard Mr. K.K. Jhunjhunwala, learned Counsel appearing for the Appellant/Revenue and Dr. Devi Pal, learned senior counsel appearing for the Assessee and with their consent this appeal is disposed of at the admission stage.

3. The facts of the case lie in a narrow compass:

The respondent/Assessee is an export oriented company. The Assessed filed its return for the assessment year 2001-02. In the regular assessment made u/s 143(3) the assessee claimed inter alia a sum of Rs. 2,11,22,141/- for the revenue expenditure incurred by way of repairs and maintenance of plant and machinery. This said claim was allowed by the Assessing Officer. However, the Commissioner of Income Tax issued show cause notice u/s 263 of the Income Tax Act, 1961 (in short "the Act") for the purpose of revising the order of assessment which was made by the Assessing Officer u/s 143(3) of the Act. The Commissioner of Income Tax proceeded on the basis that the Assessing Officer has allowed expenditure of Rs. 2,11,22,141/- on account of repairs and

maintenance of plant and machinery which was so valued at Rs. 10,60,56,321/-. According to Commissioner of Income Tax, since expenditure incurred by the assessee in maintenance and repairs of plant and machinery constituted substantial addition to the value of plant and machinery, the order of Assessing Officer in allowing total expenditure as revenue expenditure is erroneous and prejudicial to the interests of Revenue. The Commissioner of Income Tax, therefore, set aside the order of Assessing Officer.

4. Aggrieved by the said order passed by the Commissioner of Income Tax, the respondent-assessee preferred appeal u/s 260A of the Act before the Income Tax Appellate Tribunal. The Tribunal after hearing the parties, set aside the order passed by the Commissioner of Income Tax holding that the same is perverse and erroneous in law. Hence, this appeal by the appellant-Revenue.

5. Mr. K.K. Jhunjhunwala, learned Counsel appearing for the appellant, firstly submitted that the order of Tribunal is illegal, erroneous and perverse in law. Learned Counsel submitted that the Tribunal was not justified in holding that the assessment order was not erroneous and prejudicial to the interests of Revenue. Learned Counsel submitted that as a matter of fact, the Assessing Officer had made assessment in stereotype manner ignoring the decision of the Supreme Court in the case of Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta, . Learned Counsel further submitted that the Tribunal ought to have dismissed the appeal filed by the assessee.

6. Dr. Devi Pal, learned Senior Counsel appearing respondent, on the other hand, firstly submitted that u/s 260A of the Act, the appeal shall lie from the order of the Tribunal only on substantial question of law and not on the finding of fact arrived at by the Tribunal. Learned Counsel submitted that Tribunal has recorded categorical finding that all the details regarding break-up of expenditure of Rs. 2,13,22,141/- were given by the assessee and the Assessing Officer scrutinized and verified each and every expenditure and passed the assessment order. Learned Counsel submitted that the Tribunal further recorded a finding that value of the plant and machinery i.e. the original cost of plant and machinery as on 31.3.2001 was Rs. 20,43,90,426/- and not Rs. 10,60,56,321/- which was only written down value of the said plant and machinery and not the cost of plant and machinery. This fact has not been disputed by the respondent before the Tribunal. Learned Counsel lastly submitted that the Tribunal after considering the ratio of the Supreme Court in the case of Ballimal Naval Kishore and Another Vs. Commissioner of Income Tax, has rightly come to the conclusion that the order of Commissioner of Income Tax is not at all sustainable on the basis of the said decision.

7. From perusal of the order passed by the Commissioner of Income Tax u/s 263 of the Act, it reveals that the assessee in its written submission has categorically stated that the gross value of plant and machinery as on 31.3.2001 is Rs. 20,43,90,426/- and not Rs. 10,60,56,321/-. Neither the said fact was controverted by the Revenue nor any finding was recorded by the Commissioner

that value of plant and machinery is not Rs. 20,43,90,426/-. The Commissioner simply recorded a finding that the expenditure alleged to have incurred by the assessee constitutes substantial addition to the value of the old plant and machinery and therefore, it should have been treated as capital expenditure relying on the decision of the Supreme Court in the case of Ballimal Naval Kishore and Another Vs. Commissioner of Income Tax, .

8. We shall now discuss the ratio decided by the Supreme Court in the case of Balimal Nawal Kishore (supra). In that case, the facts were that the assessee had claimed expenditure towards total renovation of Cinema Theatre by installing new machinery, new furniture, new sanitary fitting lings and new electrical wirings, etc besides extensively repairing the structure of "the building. On these facts, the Supreme Court observed:

The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure on repairs what is really being done is to preserve and maintain an already existing asset. The object of the expenditure is not to bring a new asset into existence, nor is its object the obtaining of a new or fresh advantage. This can be the only definition of the "repairs" because it is only by reason of this definition of repairs that the expenditure is a revenue expenditure.

If the amount spent was for the purpose of brining into existence a new asset or obtaining a new advantage, then obviously such an expenditure would not be an expenditure of a revenue nature but it would be a capital expenditure, and it is clear that the deduction which the legislature has permitted u/s 10(2)(v) is a deduction where the expenditure is a revenue expenditure and" not a capital expenditure.

9. In the instant case, the Tribunal recorded a categorical finding that the claim of the assessee is supported by detailed expenditure furnished by it before the Assessing Officer. The Tribunal also noticed the decision of the Supreme Court referred by the Commissioner and come to the following conclusion:

5. On careful analysis of the orders passed In the departmental authorities in the light of the submissions made by the rival names as well as the decisions relied upon by the Id CIT (SUPRA). The undisputed fuel relating to the issue are that the assessee hundred per cent export oriented company and the return filed by it for the period under consideration was taken up for scrutiny assessment by the Assessing Officer and white passing the assessment order the Assessing officer examined each and every aspect of the claim of the assessee with reference to the documentary evidence and then allowed the claim. The Assessing officer not only examined the claim of the assessee but also passed a rectification order u/s 154 when the assessee pointed out certain mistakes. While passing the impugned order, Id CIT has issued notice to the assessee mentioning that the expenditure claimed by the assessee towards maintenance and repairs is more than 20% of the cost of the plant and machinery and such an expenditure is to

be treated as capital expenditure, for this he derived support from the order of the Hon''ble Supreme Court rendered in the case of Balimal Naval Kishore (supra). In the said case the facts were that the assessee had claimed expenses towards total renovation of cinema theatre by installing new machinery, new furniture, new sanitary fittings and new electrical wiring, etc. besides extensively repairing the structure of the building. Under those circumstances the Hon''ble Supreme Court had directed the expenditure incurred to be treated as capital expenditure. In the case before us the facts and circumstances are different. In this case the assessee's trade is to produce articles. The assessee company consumes specially imported spares representing consumable spares relating to the production. The assessee company through a comparative chart has given the break-up of expenditure incurred towards maintenance and repairs of the plant and machinery which discloses that one item viz.. diamond wheel used in the culling of drills and routers manufactured by the assessee company is consumable spares. In that process the assessee has assumed consumable spares worth Rs. 1,39, 20,742 -. Other spares were mostly related to the production and only some items related to repairs. After being satisfied with this break, the Assessing Officer allowed the claim of the assessee for cost of maintenance and repairs of the plant and machinery. Having done so, the order passed by the Assessing Officer is in, now away erroneous more so in the light of the decision of the Hon''ble Supreme Court in the case of Balimal Naval Kishore (supra) relied on by the learned CIT. In that case it was held by the Hon''ble Supreme Court, taking the into consideration, field by Justice Chagla CJ in the case of Shorrock Spinning and Manufacturing Co Ltd. (supra) wherein the Hon''ble Justice held-

The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure on repairs what is really being done is to preserve and maintain an already existing asset. The object of the expenditure is not to bring a new asset into existence, nor is its object the obtaining of a new or fresh advantage. This can be the only definition of the "repairs" because it is only by reason of this definition of repairs that the expenditure is a revenue expenditure.

If the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage, then obviously such an expenditure would not be an expenditure of a revenue nature but it would be a capital expenditure, and it is clear that the deduction which the legislature has permitted u/s 10(2)(v) is a deduction where the expenditure is a revenue expenditure and not a capital expenditure.

The undisputed facts as enumerated above, if analyzed keeping in mind the ratio laid down by the Hon''ble Supreme Court, it is clear that the claim of the assessee is supported by the details furnished before the Assessing Officer in the form of comparative chart which was also attached with the reply of the assessee to the show cause notice issued by the learned CIT. It is further clear that the

expenditure incurred by the assessee is on account of repairs and maintenance of plant and machinery and not for the purpose of bringing into existence any new asset for enduring benefit for a long time to the assessee. Therefore, even if the ratio laid down by the Hon"ble Supreme Court in the case of Balimal Naval Kishore (supra) is taken into consideration, the conclusion reached by the CIT is not at all sustainable for legal scrutiny. When once the expenditure allowed by the Assessing Officer is not found to be incurred, the order passed by the Assessing Officer can never be erroneous that too causing prejudice to the interests of the revenue. The order of the CIT is not sustainable for legal scrutiny particularly when it is made clear from the last sentence of his order that he wanted to meet the audit objection. Hence under these facts and circumstances of the case, the order passed by the CIT appears to be perverse. Hence allowing the appeal of the assessee, we quash the same.

6. In the result, the appeal of the assessee is allowed.

10. Besides the above, Section 260A of the Act very clearly provides that appeal shall lie to the High Court from every order passed in appeal by the- appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law. Sub-section (4) of Section 260A further provides that appeal shall be heard only on the question so formulated and such question of law shall be decided. Section 260A reads as under:

260A. (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal [before the date of establishment of the National Tax Tribunal], if the High Court is satisfied that the case involves a substantial question of law.

(2) The Chief commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this subsection shall be-

(a) filed within one hundred and twenty days from the date on which the order appealed against is [received by the assessee or the Chief commissioner or Commissioner];

(b) ...

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(4) The appeal shall be heard only on the question so formulated and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

Provided that nothing in this subsection shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any

other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(6) The High Court may determine any issue which:

(a) has not been determined by the Appellate Tribunal, or

(b) has been wrongly determined by the Appellate, Tribunal, by reason of a decision on such question of law as is referred to in Sub-section (1).

(7) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

11. In the instant case, as noticed above, the dispute raised by Revenue is only that the expenditure shown by the assessee is not a revenue expenditure for the purpose of maintenance of plant and machinery but it was a capital expenditure. The Assessing Officer before whom return was filed by the assessee along with full details of expenditure has accepted the return and allowed the amount in question by way of expenditure towards plant and machinery. The Commissioner of Income; Tax, however, reversed the order of the Assessing Officer without assigning the reasons. It is interesting to point, out that the main reason for reversal of the order of the Assessing Officer by the Commissioner was that the audit may raise objection. The last paragraph of the Commissioner's order is quoted herein below:

Thus, I think it appropriate to set aside the issue back to the files of the Assessing Officer for fresh consideration on the issue with a direction that fresh order be made after proper verification and enquiry as has been determined by Chagla C.J., in New Shorrock Spinning and Manufacturing Co. Ltd. Vs. Commissioner of Income Tax, Bombay North, which has been accepted by the Apex Court in the case of CIT v. Balimal Nawal Kishore 224 ITR 414. But of course the matter of valuation be investigated by him as it is the main plant of the objection raised by the Audit.

12. Besides the above, it is well settled that order u/s 263 of the Act can be passed by the Commissioner of Income Tax only if order passed by the Assessing Officer is erroneous, insofar as it is prejudicial to the interests of Revenue. It is equally well settled that every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of Revenue.

13. In the case of Malabar Industrial Co. Ltd. v. Commissioner of Income Tax 243 ITR 83, the Supreme Court while considering the phrase "prejudicial to the interests of Revenue" observed:

The phrase "prejudicial to the interests of the Revenue " has to be read In

conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income Tax Officer adopted one of the courses permissible in law and it has resulted in loss of Revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income Tax Officer is unsustainable in law. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Rampyari Devi Saraogi Vs. Commissioner of Income Tax, West Bengal and Others, and in Smt. Tara Devi Aggarwal Vs. Commissioner of Income Tax, West Bengal, Calcutta, .

14. Same view has been taken by the Supreme Court in subsequent decision in the case of CIT v. Max India Ltd. (2007) 213 CTR (SC) 266.

15. Considering the entire facts and circumstances of the case, we come to the conclusion that in the instant case, firstly no substantial question of law is involved, secondly, the order passed by the Tribunal reversing the order of the Commissioner is perfectly in accordance with law.

For the reasons aforesaid, there is no merit in this appeal which is, accordingly, dismissed.