
(2008) 02 GUJ CK 0049
In the Gujarat High Court
Case No : IT Ref. No. 122 of 1996

Commissioner of Income Tax

APPELLANT

Vs

Dinesh Mills Ltd.

RESPONDENT

Date of Decision : 19-02-2008

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 263, 43B

Citation : (2008) 215 CTR 440 : (2008) 302 ITR 164

Hon'ble Judges : Z.K. Saiyed, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Manish R. Bhatt, for the Appellant; Manish J. Shah, for the Respondent

Judgement

D.A. Mehta, J.—The Tribunal, Ahmedabad Bench "B" has referred the following question u/s 256(1) of the IT Act, 1961 (the "Act") at the instance of the CIT:

Whether, the Tribunal is right in law and on facts in quashing the order passed by CIT u/s 263 of the Act whereby he had directed the AO to disallow interest of Rs. 2,63,658 payable on excise refund?

2. The assessment year is 1986-87. Assessment for the assessment year in question came to be framed vide assessment order dt. 31st March, 1989. The Commissioner of Income Tax, Baroda (the CIT) issued show cause notice u/s 263 of the Act on the following ground:

The interest payable on excise refund amount to Rs. 2,63,658 has been claimed and allowed as a deductible item, the same being a statutory liability needs to be disallowed u/s 43B.

After considering the submissions of the assessee the CIT came to the conclusion that the amount of Rs. 2,63,658 should not have been allowed as a deduction while computing the total income of the assessee and hence, holding that the assessment was both erroneous and prejudicial to the interests of the Revenue, enhanced the assessment to the extent of Rs. 2,63,658.

3. The assessee carried the matter in appeal before the Tribunal. The Tribunal, for the reasons stated in impugned order dt. 16th Jan., 1996, allowed the appeal holding that the liability of the impugned interest accrued in the year under consideration, the AO had rightly allowed the deduction thereof as per the method of accounting regularly followed by the assessee and, therefore, the CIT was not justified in treating the assessment order as erroneous and prejudicial to the interests of the Revenue. Accordingly the order u/s 263 of the Act was quashed.

4. Mr. M.R. Bhatt, learned senior standing counsel appearing for the applicant Revenue, assailed the impugned order of the Tribunal by pointing out that the Tribunal had failed to appreciate that the liability to pay interest was not a contractual liability and hence, it should be considered to be a statutory liability which would be allowable only on fulfilment of requirements u/s 43B of the Act. That the interest was payable to the Excise Department in relation to refund of excise duty and, therefore, would assume the same characteristic viz. characteristic of excise duty. Therefore, the interest payable by the assessee was correctly disallowed u/s 43B of the Act by the CIT u/s 263 of the Act. In support of the submissions made reliance has been placed on decision of this Court in the case of Commissioner of Income Tax Vs. Express Hotel P. Ltd.,

5. As against that Mr. M.J. Shah, learned advocate for the respondent assessee, while supporting the order of the Tribunal, has sought to derive support from the apex Court decision in the case of Commnr. of Income Tax and Another Vs. Distillers Co. Ltd., It was submitted that the Tribunal had rightly appreciated the fact that the assessee was required to pay interest, not because of any statutory provision but because of an order made by the High Court in related proceedings, in context of the claim of the assessee for refund of excise duty.

6. The facts are not in dispute. The assessee, a limited company, carried on business of manufacture of cloth and was also engaged in manufacture of blended yarn. The assessee had started manufacturing such blended yarn a few years prior to 1972. On such manufactured yarn the assessee paid excise duty under Tariff Item Nos. 18 and 18A of the First Schedule to the Central Excise and Salt Act, 1944 (the Excise Act) till 1972. By the Finance Act, 1972 a new Tariff Item N0.I8E was introduced in the Excise Act whereunder, for the first time, the blended yarn was subjected to excise duty w.e.f. 16th March, 1972. The assessee, therefore, claimed refund of the excise duty paid for the period upto 15th March, 1972. After protracted litigation the Trial Court held that levy of excise duty on blended yarn upto 15th March, 1972 was illegal, void and ultra vires. Union of India preferred appeal before the High Court of Gujarat and also filed an application for stay of operation of the order of the Trial Court. The High Court, however, granted interim stay of operation of the order of the Trial Court subject to the condition that the assessee could withdraw the decretal amount of excise duty paid upto 15th March, 1972 upon furnishing of bank guarantee and further condition that the assessee undertakes to pay interest if the appellant

succeeds. Finally, when the appeal was decided by the High Court it was held that the assessee was not entitled to claim refund of excise duty and hence, vide order dt. 6th April, 1984 the High Court directed the assessee to refund the excise duty withdrawn with 12 per cent interest on the said amount.

7. The assessee carried the matter in appeal before Supreme Court of India by way of a SLP to appeal. While granting Special Leave to appeal Supreme Court stayed the recovery of excise duty withdrawn by the assessee, subject to the assessee filing an undertaking that in the event of the assessee losing in the appeal, the assessee will have to refund the amount to the Central Government, together with interest @ 12 per cent per annum, and that the bank guarantee furnished by the assessee for the full amount shall continue till decision of the appeal. It is this amount of Rs. 2,63,658 which has been paid as interest by the assessee by making a provision in the accounts on the basis of the order of the High Court which is in dispute.

8. In light of the aforesaid facts it becomes apparent that the assessee had, under a mistaken belief of the law applicable, paid certain sum of excise duty for which a claim of refund was made upon realization that till 15th March, 1972 the assessee was not liable to pay any excise duty. The assessee having succeeded in Trial Court and having obtained a decree in its favour sought refund of the said amount, but the High Court granted such refund of the decretal amount subject to the condition of furnishing of bank guarantee and undertaking to make payment of interest, in the event Union of India succeeded in the appeal before the High Court. Actually Union of India did succeed which resulted in the assessee making the appropriate provision in the accounts as the liability had accrued on the date High Court made the order.. Therefore, the interest was not in relation to any statutory duty as such.

9. The entitlement of the assessee to the refund from the Excise Department was because a decree had been made in favour of the assessee by holding that the amount collected as excise duty was in fact an illegal collection and did not have any character of duty under the Excise Act. While seeking stay of operation of the order and decree made by the Trial Court, Union of India was forced to deposit the decretal sum which was permitted to be withdrawn by the High Court subject to condition as aforesaid.

10. In the aforesaid set of facts and circumstances of the case the interest in question cannot, by any stretch of imagination, be treated as a statutory liability as the principal amount itself was a decretal amount and there was no question of the said amount having the characteristic of duty under the Excise Act. Provisions of Section 43B of the Act can be made applicable only in a case where any tax, duty, cess, etc. of like nature are collected by an assessee, not paid to the account of the Government entitled to such impost, and yet a deduction is claimed against taxable income. In the present case, thus, none of the requirements of Section 43B of the Act are shown to have been fulfilled and the Tribunal was, therefore, justified in holding that the CIT had wrongly assumed

jurisdiction u/s 263 of the Act to disallow the amount of interest provided for by the assessee in its accounts.

11. In the result, the question referred for the opinion of this Court is answered in the affirmative i.e. in favour of the assessee and against the Revenue. The reference stands disposed of accordingly. There shall be no order as to costs.