(2010) 01 P&H CK 0178

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax — APPELLANT

Vs

Escorts Auto Components Ltd. and Eco Auto Components Ltd. (formerly known as Escorts Components Ltd.) — RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:
Income Tax Act, 1961 — Section 10, 139, 143, 260A, 36

Citation : (2010) 323 ITR 11 : (2011) 197 TAXMAN 42

Hon'ble Judges : M.M. Kumar, J;Jitendra Chouhan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—By this order we propose to dispose of I.T.A. No. 17 of 2009 (in respect of the assessment year 2002-03) and I.T.A. No. 77 of 2009 (in respect of the assessment year 2001-02). Both the appeals are filed against the same assessee although the assessment years differs and the Income Tax Appellate Tribunal, Delhi Bench "I", New Delhi (for brevity, "the Tribunal") has placed reliance on its earlier order (assessment year 2001-02) while deciding the appeal in respect of the assessment year 2002-03. These appeals have been filed u/s 260A of the Income Tax Act, 1961 (for brevity, "the Act"). In I.T.A. No. 77 of 2009, the following two substantive questions of law have been raised for determination of this Court:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the order of the Commissioner of Income Tax (Appeals) in deleting the addition of Rs. 72,60,300 on account of new project expenses holding the same to be of revenue nature as against the admission of capital nature by assessee in its notes to accounts even though the assessee had identified Rs. 72,60,300 for diversification and expansion of new product range including acquisition of machinery to aid such expansion and the amount had been shown pending technical quantification under capital work-in-progress?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in restoring the issue on account of bad debts written off of Rs. 10,72,917 to the file of the Assessing Officer with a direction to adjudicate the same afresh, as per the relevant provisions of the Act even when the assessee failed to prove its claim that the debts have actually became bad debts and also failed to furnish details of the write off of the bad debts?

2. The brief facts of the case are that the assessee-respondent filed its return on October 29, 2001. The assessment was completed u/s 143(3) of the Act, vide assessment order dated March 31, 2004, by assessing the income at Rs. 1,22,76,440.

Re.: Question No. 1

3. Feeling aggrieved the assessee-respondent filed an appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal vide order dated December 5, 2005. It is appropriate to mention that the Commissioner of Income Tax (Appeals) recorded a finding that the return filed by the assessee-respondent on October 29, 2001, was revised on January 28, 2003. The assessee-respondent had initially declared total income of Rs. 40,20,690. In the revised return it was claimed that the assessee suffered loss of Rs. 32,39,614. The principal reason for revising the return was that in the original return it could not claim expenses debited under the head "Capital work-in-progress", which have been duly claimed in the revised return. The case was selected for scrutiny. The assessment was completed as already noticed in the preceding paragraph. The Assessing Officer has taken the view that in the original return the assessee had identified Rs. 72.60 lakhs for diversification and expansion of new product range including acquisition of machinery to aid such expansion. On account of the aforesaid notings to the annual accounts, the Assessing Officer concluded that the expenditure related to new projects and is of capital nature because the assessee itself was treating it to be capital expenditure.

4. The Commissioner of Income Tax (Appeals) noticed that details of 32 items were mentioned in the submissions made to the Assessing Officer for his comments who neither made comments on the nature of the expenditure incurred nor had he commented on the treatment of the accounting entries in the books of account. The Commissioner of Income Tax (Appeals) had further pointed out that the Assessing Officer has simply treated the expenditure incurred on a new project although it is not for setting up a new project. The finding recorded by the Commissioner of Income Tax (Appeals) is that it is only a development of new product/modification of the product within the same organisation, within the existing infrastructure, common fund, common management and no "capital assets" have been created out of the expenditure. After referring to the judgment in the case of Empire Jute Co. Ltd. Vs. Commissioner of Income Tax, , the Commissioner of Income Tax (Appeals) has held as under:

On overall examination of the facts of the case that emerge is that the assessee had bifurcated the sum of Rs. 72,60,300 out of the total expenditure on salary and wages, telephone, travelling expenses and other administrative expenses, and allocated to the modification of existing products/development of new products, with the assets under the same management, with the same work force and expertise, with the same existing machinery including the buildings. The Assessing Officer has not doubted that the expenditure incurred was not exclusively and wholly for the purposes of business. The dispute arose only because of the fact that the assessee himself first treated this as capital expenditure, and later on claimed as revenue expenditure in the revised return. To decide the issue, it will first have to be ascertained whether the expenditure incurred is on capital account or on revenue account. Obviously, in this case no new machinery has been purchased or now (no?) new capital asset has been purchased, the expenditure is only on the day-to-day running of the existing business. Wherein the bifurcation has been made separately for the products under which certain items were to be modified and certain new items were to be manufactured to earn more profits or advantage in the long run.

Further, keeping in view the decision of the hon''ble Supreme Court in the case of Empire Jute Co. Ltd. Vs. Commissioner of Income Tax, , the nature of the advantage has to be seen in a commercial sense. The Hon''ble Supreme Court has held that whereas in the capital field it would be only that the expenditure would be disallowable on an application on the tests, where expenditure has been incurred for obtaining an advantage of enduring benefit but whereas the expenditure is incurred for obtaining an advantage of enduring benefit on revenue account, the position will be different, i.e., if the advantage consists merely in facilitating the assessee''s trading operations or enabling it to carry on the business to be carried out more efficiently or more profitably while leaving the fixed assets untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. Looking from this angle, the expenditure incurred by the assessee was with a view to earn more profits, while leaving its fixed capital untouched. It is further that in some of the items the project has been abandoned also and some were even completed or continued and, therefore, although the assessee intended to obtain an advantage of enduring benefit and it was in the revenue field. This contention of the learned Counsel carries force and, therefore, the expenditure has to be categorized as a revenue expenditure in the decision of the hon''ble Supreme Court (quoted supra).

(emphasis added)

5. The Commissioner of Income Tax (Appeals) also placed reliance on the judgment of the Hon''ble Supreme Court in the case of The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, . Emphasising on the sanctity of the statutory provisions, the Hon''ble Supreme Court rejected one of the following contentions of the Revenue as under (page 367)

The main contention of the learned Solicitor General is that the assessee failed to debit the liability in its books of account and, therefore, it was debarred from claiming the same as deduction either u/s 10(1) or u/s 10(2)(xv) of the Act. We are wholly unable to appreciate the suggestion that if an assessee under some misapprehension or mistake fails to make an entry in the books of account and although under the law, a deduction must be allowed by the Income Tax Officer, the assessee will lose the right of claiming or will be debarred from being allowed that deduction. Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter.

(emphasis added)

6. Feeling aggrieved, the Revenue filed an appeal before the Tribunal. The Tribunal under ground No. 1 reiterated the findings given by the Commissioner of Income Tax (Appeals) by observing that the assessee had bifurcated the sum of Rs. 72,60,300, out of total expenditure on salary and wages, telephone, travelling expenses and other administrative expenses and allocated to the modification of existing products/developments of new products with the asset under the same management, with the same work force and expertise. It also observed that the Revenue did not ever doubt that the expenditure was exclusively and wholly for the purposes of business. Accordingly, the Tribunal accepted the approach adopted by the Commissioner of Income Tax (Appeals).

7. Having heard learned Counsel on the first issue, we are of the view that by no stretch of imagination the expenditure incurred by the assessee-respondent could be regarded as capital expenditure. Merely because the assessee-respondent has declared by giving a note in its original return that it was an expenditure pertaining to new project and is of capital in nature, the Assessing Officer could not have treated the same as the capital expenditure. Moreover, when the Commissioner of Income Tax (Appeals) asked for the comments of the Assessing Officer, he did not comment on the nature of the expenditure incurred nor commented on the treatment of the accounting entries in the books of account. The Assessing Officer simply placed reliance on the note given by the assessee-respondent in its original return, which has been regarded as insufficient. Moreover, u/s 139(5) of the Act, the assessee-respondent was entitled to file the revised return rectifying the error committed in showing the expenditure. Moreover, the finding of the Tribunal that the expenditure incurred was revenue expenditure and/or for business purpose, has not been challenged, nor is there any challenge to the finding that no capital asset has come into existence. The Tribunal has recorded in paragraph 4 of its order that the Revenue did not ever doubt that the expenditure incurred was exclusively and wholly for the purpose of business. In that regard reliance may be placed on the judgment of the Delhi High Court in the case of Commissioner of Income Tax Vs. Denso India Limited, , where expenditure incurred for setting up a separate cell for

developing import substitute components, was regarded as revenue expenditure. It was found as a fact that the expenditure by the assessee was incurred on salaries, wages, travelling expenses, as is the factual situation in the instant appeals. Therefore, we do not find that the first question of law would arise for determination of this Court.

Re. : Question No. 2

8. The second question claimed by the Revenue would also not arise for our determination. The Tribunal has remanded the matter back on the aforesaid issue on the file of the Assessing Officer, as is evident from the perusal of paragraphs 6, 7 and 8 of its order, which reads thus:

6. In ground No. 2 : The assessee-company claimed deduction of Rs. 10,72,917, on account of provisions for doubtful debts written off during the year. The Assessing Officer gave a finding that the basis for the provision created was not given nor the details of the write off for bad debts were supplied. However, the Commissioner of Income Tax (Appeals) deleted the addition without reference to and appreciation of the provisions of Section 36(1)(vii) read with Sub-section (2) thereof. A perusal of Section 36(1)(vii) indicates that the section opens with ''subject to the provision of Sub-section (2)'' meaning thereby that strict compliance with the provision of Sub-section (2) is a statutory condition. However, the Commissioner of Income Tax (Appeals) had not discussed whether the said statutory condition had been satisfied by the assessee.

7. In the course of appellate proceedings both the learned authorised representative and Departmental representative expressed the view that the matter should be restored back to the file of the Assessing Officer, with a view to ascertaining the compliance with the relevant statutory conditions, on the issue in question.

8. In view of this the issue in question raised in this ground of appeal is restored to the file of the Assessing Officer, with a direction to adjudicate the same afresh, as per the relevant provisions of the Act and after providing reasonable and proper opportunity both to the assessee and Revenue.

9. A perusal of the aforesaid paragraphs would show that the Departmental representative along with the counsel for the assessee had submitted to the Tribunal that the matter should be restored back to the file of the Assessing Officer. It is not, thus, open to the Revenue now to urge that a substantive question of law would arise and accordingly the same be adjudicated by this Court. Moreover, the issue is yet to be finally determined and whenever it is finally determined the aggrieved party would be entitled to avail of remedies in accordance with law. In that regard reliance may be placed on the observation made by a Division Bench of this Court (of which one of us, M.M. Kumar, J. was a member) in paragraph 5 of the judgment rendered in the case of Punjab Small Industries and Export Corpn. Ltd. Vs. Commissioner of Income Tax, . The Division Bench has observed that once the matter has only been remanded back

to the Assessing Officer for fresh determination then the issue cannot be considered to have been finally determined and after determination it would remain open to the parties to avail of the remedies in accordance with law. Therefore, we do not find any reason to adjudicate on the second question at this stage.

10. No other question has been claimed nor any other argument has been urged.

11. Accordingly, these appeals fail and the same are dismissed.

12. A photocopy of this order be placed on the file of connected appeal.

