(2002) 12 MAD CK 0030

In the Madras High Court

Case No : T.C. No. 437 of 1999

Commissioner of Income Tax APPELLANT

Vs

Fenner India Ltd. RESPONDENT

Date of Decision : 19-12-2002

Acts Referred:
Income Tax Act, 1961 — Section 43B

Citation : (2003) 130 TAXMAN 394

Hon'ble Judges : N.V. Balasubramanian, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Pushya Sitharaman, for the Appellant; P.P.S. Janardhana Raja and Subbaraya Aiyar, for the Respondent

Judgement

1. At the instance of the Revenue, the income tax Appellate Tribunal has stated a case and referred the following question of law in relation to the

assessment year 1986-87 of the assessee.

Whether on the facts and circumstances of the case, the Tribunal is correct in law in holding that the excise duty of Rs. 39,64,061 paid on the

unsold goods should be reduced from the closing stock ?

The assessment year involved is 1986-87 and the relevant previous year ended on 31-8-1985. During the course of assessment proceedings, the

assessee claimed a sum of Rs. 39,64,061 as deduction in the computation of the business income on the score that the said amount was paid as

excise duty and should be allowed as deduction u/s 43B of the income tax Act, 1961 (hereinafter referred to as ""the Act"").

2. The Assessing Officer found that the assessee had valued the closing stock at cost and showed the excise duty paid under the heading ""loans

and advances"" from the customers. The Assessing Officer, therefore, held that the closing stock was not properly valued as the assessee did not

include the excise duty paid on the finished goods as part of the cost of the closing stock of the unsold goods. The Assessing Officer, therefore,

held that the excise duty paid should be taken as a part of the component of valuation of the closing stock, and made an addition of Rs, 39,64,061

towards the closing stock of the unsold goods. It is, no doubt, true that the Assessing Officer has also granted the necessary deduction of the said

sum on the ground that it was paid. The order of the Assessing Officer making addition of the excise duty and granting deduction also on the same

amount was upheld by the Commissioner of income tax (Appeals) on appeal. However, the income tax Appellate Tribunal without going into the

factual details of the matter held that the excise duty cannot form part of the closing stock valuation of the unsold goods held by the assessee and

allowed the appeal preferred by the assessee. Aggrieved by the order of the Appellate Tribunal, the revenue has sought for reference and hence,

the reference has been made on the question of law referred to us earlier.

3. Heard Mrs. Pushya Sitharaman, Senior Standing Counsel for the income tax and Mr. P.P.S. Janarthana Raja appearing for the assessee.

4. Learned counsel for the assessee placed reliance on a decision of this Court in Commissioner of Income Tax Vs. English Electric Co. of India

Ltd., and submitted that on the basis of the decision rendered in English Electric Company of India Limited, when the deduction of excise duty paid

in the computation of business is given, the amount of the excise duty paid should be added to the value of the closing stock.

5. Learned counsel for the revenue strongly placed reliance on a decision in Chen Kuam Tain Vs. CESC Ltd.,

6. Mr. Janarthana Raja learned counsel for the assessee strongly placed reliance on a decision of this Court in Chemicals & Plastics India Ltd. v.

CIT [2002] 125 Taxman 648 (Mad.) and submitted that on the basis of the decision of this Court, the assessee is entitled to claim deduction on

the excise duty paid in the determination of closing stock valuation.

7. We are of the view that it is not necessary to decide the question referred to us as the Appellate Tribunal has not decided the necessary factual

details. As already observed the Assessing Officer has not only included the excise duty as part of the component of the closing stock, but also granted deduction, but the Tribunal however, did not go into the question at all and decided the issue on the basis of legal principle. We are

therefore of the view that for a proper perspective to decide the issues that arise in this case, the Tribunal should ascertain the factual dispute and

then decide the question in accordance with the principles of law laid down by this Court in the case of (i) English Electric Co. of India Ltd.''s case

(supra)(ii) Berger Paints India Ltd.''s case (supra), (iii) Chemicals & Plastics India Ltd.''s case (supra). Accordingly without answering the question

of law referred to us, we remit the matter to the Appellate Tribunal with a direction to consider the matter afresh, in accordance with law. No

costs.