
(2005) 04 GUJ CK 0019
In the Gujarat High Court
Case No : IT Ref. No. 134 of 1993

Commissioner of Income Tax

APPELLANT

Vs

Glow Tech Steels (P) Ltd.

RESPONDENT

Date of Decision : 04-04-2005

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 271(1)

Citation : (2005) 196 CTR 177 : (2006) 280 ITR 133 : (2005) 148 TAXMAN 289

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

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

Judgement

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

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in cancelling the penalty u/s 271(1)(c) ?"

2. The assessment year is 1978-79 and the relevant accounting period is the year ended on 30th June, 1977. During the course of assessment proceedings, the AO noticed that extra-shift allowance at 10 per cent on plant and machinery had been claimed by the assessee on the basis that the factory had worked three shifts daily. On being asked to substantiate the claim, the assessee stated that extra-shift allowance had been claimed through oversight. The AO held that the assessee had furnished inaccurate particulars of its income in respect of extra-shift allowance and levied penalty for a sum of Rs. 54,176 u/s 271(1)(c) of the Act which was 100 per cent of the tax effect attributable to the claim of extra-shift allowance. The assessee carried the matter in appeal before the CIT(A), but, failed.

3. In second appeal filed before the Tribunal, the Tribunal vide its order dt. 26th

March, 1992, deleted the penalty.

4. Mrs. M.M. Bhatt, learned standing counsel for the applicant-Revenue, submitted that the Tribunal had erred in assigning various reasons on its own even though it was not the case of the either side before it. She further submitted that the reasoning which weighed with the CIT(A) had not been taken into consideration by the Tribunal while deleting the penalty. In other words, the submission was that the assessee had not been able to explain as to how the mistake, through oversight, was committed by the assessee. She, therefore, urged that in the circumstances, it be held that the assessee had furnished inaccurate particulars of income and was liable to penalty u/s 271(1)(c) of the Act.

5. The Tribunal has found from the facts on record that the claim for extra-shift allowance is a case of oversight and for recording this finding, the Tribunal has taken note of the fact that both before the claim of extra-shift allowance and after the claim of extra-shift allowance, the returned figure of income remained at nil. Not only that, even the assessment completed after disallowance of such extra allowance was completed at a nil figure. In the circumstances, the Tribunal has held that the assessee would not have benefited by claiming the higher depreciation by way of extra-shift allowance. Considering the scheme of the provisions, the Tribunal has held that depreciation is allowable only upto the cost of plant and machinery and nothing in excess of the cost can be allowed as depreciation. That depreciation is an item which can be carried forward indefinitely, to be set off against the income of future years, but despite that the total allowance is restricted to the extent of the cost of plant and machinery. In case depreciation is claimed at a higher percentage for the year under consideration and the same is allowed, in subsequent year the assessee would be eligible for lesser amount of depreciation considering the reduced written down value. The Tribunal has further found that there was no admission by the assessee that there was any concealed income or that the assessee has furnished inaccurate particulars of income. In other words, admission was only to the effect that the claim had been made through oversight. The Tribunal has further found that the statement of the assessee that the claim was due to oversight was not untrue.

6. In light of the aforesaid findings of fact recorded by the Tribunal, it is apparent that there is no infirmity in the impugned order of the Tribunal. The Tribunal has appreciated the facts of the case in light of the statutory scheme for the purpose of allowing depreciation and no fault can be found with the reasoning adopted by the Tribunal. The grievance of the applicant-Revenue that the reasoning was supplied by the Tribunal on its own is factually incorrect. As can be seen from para No. 3 of the impugned order of the Tribunal which records the submissions made on behalf of the assessee, it was specifically pleaded before the Tribunal that depreciation was allowable upto cost of plant and machinery and by virtue of mistake committed due to oversight the assessee could not have benefited in any

way by claiming depreciation at higher rate.

7. It is necessary to note that even if the said aspect had not been urged before the Tribunal, it was always open to the Tribunal to record its findings, in fact it was the duty of the Tribunal to arrive at a decision in accordance with the scheme envisaged by the provisions. The Tribunal having done so cannot be considered to have committed any error which would require any interference by this Court.

8. In the result, the question referred to the Court is answered in the affirmative, i.e., in favour of the assessee and against the Revenue. The Tribunal was justified in cancelling the penalty levied u/s 271(1)(c) of the Act, on the facts and in the circumstances of the case.

9. The reference stands disposed of accordingly. There shall be no order as to costs.