(2009) 01 CAL CK 0017

In the Calcutta High Court

Commissioner of Income Tax APPELLANT

Vs

Gmm Co. Ltd. RESPONDENT

Date of Decision : 13-01-2009

Acts Referred:
Income Tax Act, 1961 — Section 200, 40, 43B

Citation : (2009) 01 CAL CK 0017

Hon'ble Judges : Sankar Prasad Mitra, J;Pinaki Chandra Ghose, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. We have heard Mr. Dipak Som, learned senior advocate appearing for the appellant. We have also perused the order passed by the Commissioner (Appeals) as well as the order of the learned Tribunal. It appears to us that most of the grounds which were tried to be made out here were not pressed before the Commissioner (Appeals) by the department. The assessee is a company engaged in the business of agency/trading relating to earth moving equipments, manufacturing of diesel generating sets etc. The assessing officer made addition in respect of cess paid on electricity, payment made to the insurance company, payment made on account of computer software maintenance, prior period expenses, house property income and depreciation in respect of furniture given on hire.

2. Being aggrieved, the assessee filed an appeal before the Commissioner (Appeals). The Commissioner (Appeals) deleted all those additions which were made by the assessing officer. The Tribunal held that the assessee paid the cess during the year and claimed that such payment of cess is allowable u/s 43B in computing the total income of the assessee. Subsequent thereto, it appears that all the points which were canvassed before the Tribunal, the Tribunal duly dealt with those points and on the basis of the facts and materials placed before it, the Tribunal came to the finding in favour of the assessee. The issue in question has also been decided in favour of the assessee for the assessment year 2004-05 by

an order so passed by the learned Tribunal. The payment in respect of interest to LIC was also dealt with by the learned Tribunal and after hearing the parties, the learned Tribunal found that there was no dispute regarding the repayment of debentures by-31-3-2002. The learned Tribunal also found that the matter has been amicably settled and the assessee thereafter paid Rs. 19,16,343 by cheque.

3. In respect of the other point concerning disallowance u/s 40(a)(1) of the Income Tax Act, 1961, the learned Tribunal relying on the order of the Commissioner (Appeals) opined in favour of the assessee. The said opinion of the Commissioner (Appeals) is reproduced hereunder:

5.3 I have considered the submissions of the learned Authorized Representative of the appellant and also gone through the assessment order and the facts on record. As per provisions of Section 40(a)(1) of the Income Tax Act, 1961 any payment towards fees for technical service to a foreign party will be allowed only in the year in which tax is deducted at source and the payment is made. As per proviso to Section 40(a)(1) where in respect of any such sum tax has been deducted in any subsequent year or has been deducted in the previous year but paid In any subsequent year after the expiry of the time prescribed in Sub-section (1) of Section 200 such sum shall be allowed as a deduction in computing the income of the previous year in which less tax has been paid. The appellant debited a sum of Rs. 1,04,41,056 as the amount payable to M/s Carterpillar Asia (P) Ltd. Singapore. Out of the said amount, Rs. 86,03,536 represented such from which tax was deducted and deposited during the year and hence the same is fully allowable as per provision of Section 40(a)(1) of the Income Tax Act, 1961. The balance sum of Rs. 18,37,520 represented the amount from which tax was deducted and for the same provision was made by the appellant in their account as on 31-3-2005. Thereafter, the tax was deducted and deposited in the month of April and May, 2005 as provided by the r. 30 of IT Rules, 1962 read with Section 40(a)(1) of the Income Tax Act, 1961 and accordingly, the amount is also liable as tax was deducted and deposited within the due date. In view of the above, the entire sum of Rs. 1,04,41,056 (Rs. 86,03,536 + Rs. 18,37,520) is allowable u/s 40(a)(1) of the said Act, 1961 during the year.

5.4 The appellant further claimed that a sum of Rs. 44,20,028 payable to the same party i.e. M/s Carterpillar Asia (P) Ltd. Singapore for which tax was deducted during the year but the amount related to last year. Since the tax was deducted and deposited during the year, this amount is also allowable as per proviso to Section 40(a)(1) of the said Act, 1961. The fact is that the assessing officer disallowed Rs. 41,83,508 which was also disallowed in the earlier assessment year, i.e., assessment year 2004-05. Further, the assessing officer has also disallowed a sum of Rs. 18,37,520 being the provision made as on 31-3-2005 but the tax was deducted and deposited in the month of April and May, 2005. Under Rule 30 of the Income Tax Rules such tax is due to have been deposited within the due date and after examination of facts, it is clear that this amount is also allowable during this year. Therefore, the appellant is entitled for deduction of Rs. 48,61,084. In view of the above, the addition of Rs. 41,83,508 is hereby ordered to be deleted.

4. The other point was also dealt by the learned Tribunal when the learned Tribunal held as follows:

I have considered the submission of the learned Authorised Representative of the appellant and gone through the assessment order and the facts of the case. So far as the amount of Rs. 19,16,343 is concerned, which is payment to LIC has already been considered in the ground No. 2 and has been allowed in favour of the appellant. Regarding the other two items which represent sales-tax of Rs. 17,61,670 and the bonus of Rs. 10,20,253 is allowable as per provision of Section 43B of the Income Tax Act, 1961. Therefore, there is no excess of such expenditure over the income related to earlier years as worked out by the assessing officer in the assessment order. In view of the above and also in view of the facts and circumstances of the case, the addition of Rs. 22,93,263 made by the assessing officer is hereby ordered to be deleted.

5. In these circumstances, the learned Tribunal opined in favour of the assessee. In our considered opinion on the basis of materials on record, we do not find that the said order of the Tribunal suffers from any infirmity or irregularity. Accordingly, in our considered opinion, we do not find that there is any substantial question of law is involved to admit this appeal. Accordingly, the appeal is dismissed.