(2001) 02 RAJ CK 0034

In the Rajasthan High Court

Case No : DB IT Ref. No. 62 of 1999 16 February 2001 A.Y. 1989-90

Commissioner of Income Tax — APPELLANT

Vs

MEWAR TEXTILE MILLS LTD. — RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:
Income Tax Act, 1961 — Section 143, 256

Citation : (2001) 167 CTR 583 : (2002) 120 TAXMAN 455

Hon'ble Judges : Sunil Kumar Garg, J;Rajesh Balia, J

Bench : Full Bench

Advocate : L.M. Lodha, for the Revenue and Mahendra Gargieya and R.S. Saluja, for the Assessee, for the Appellant;

Judgement

RAJESH BALIA, J.

Heard learned counsel for the parties.

2. Unsuccessful before the Tribunal (sic) u/s 256(2) of the Income Tax Act, 1961 requiring the Tribunal to refer the following questions said to be questions of law arising out of Tribunal''s order dated 25-6-1998, in ITA No. 1960/Jp/1991 relating to assessment year 1989-90 :

"1. Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the assessing officer cannot disallow the claim of interest of Rs. 9,63,700, on the ground that it does not fall within the categories mentioned u/s 143(1)(a), inspite of the fact that the interest pertained to earlier year(s) and there was nothing on the record to show that the said amount of interest was under dispute and was settled during the accounting period in question ?

2. Whether on the facts and in the circumstances of the case the Tribunal was justified in holding that the assessing officer was not justified in denying the claim of the assessee for brought forward losses and depreciation, ignoring the fact that the assessee did not quantify the amount nor give details of such losses

in the return of income ?"

3. The Commissioner, Udaipur, has preferred this application u/s 256(2) of the Income Tax Act for referring said questions of law of Tribunal to this court for, its opinion.

4. The Tribunal has rejected that application on the ground that no question of law arises against additions made in section 143(1)(a) of the Act of 1961 are founded on the findings of the fact and not on any principle of law and, therefore, no question of law arises.

5. Section 143(1)(a) which permits the assessing officer to make certain adjustments in the return filed by the assessee without requiring his presence on the basis of information available from the return has disallowed the claim of the assessee in respect of interest amounting to Rs. 9,63,700 by holding prima facie admissible but not liable to be deducted from income of the assessee in question. Likewise the assessee has disallowed the claim of the assessee to set off, carry forward and carry forward depreciation relating to earlier orders. The Tribunal finding as a fact in respect of interest a note appended in the return along with audit report clearly mentioned that amount of interest of Rs. 9,63,700 was under dispute and was settled during the accounting period in question and, therefore, this claim was made during this period. In view of this until the assessee was required to explain the nature of the dispute and on the basis of claim of the assessee for deduction (sic) be settled. No adjustments could have been made u/s 143(1)(a).

6. Likewise regarding disallowance of the claim of carry forward of old admitted losses and depreciation on the ground that in the return filed by the assessee, the same was mentioned in the return that it was to be determined after decision of appeal. About this the Tribunal was of the view that it only goes to show that exact amount which was not known to him in respect of determining carry forward losses but the determination by the lower authority has already been made.

7. Learned counsel for the revenue contends that since prima facie information available in the return the losses as well as carry forward was accepted, the assessing officer was justified in disallowing the deduction by holding prima facie that same does not pertain to assessment year in question. The Tribunal has erred in not appreciating this position.

8. We are of the opinion that material on the basis of which deduction was claimed and has been available from the record does prima facie goes to show as per the findings of the Tribunal that the statements made in return if accepted to be correct as they are, the adjustments could not have been made.

Be that as it may the fact remains that since making by an order u/s 143(1)(a) regular assessment for the year under question has also come into existence and question about this provisional assessment has become academic.

We are not inclined to entertain this application, hence it is hereby rejected. There shall be no order as to costs.