
(2016) 02 CAL CK 0061
In the Calcutta High Court
Case No : ITA No. 269 of 2009

Commissioner of Income Tax

APPELLANT

Vs

Moran Tea Co. Ltd.

RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Income Tax Act, 1961 — Section 10, Section 143(1), Section 143(3), Section 147

Citation : (2016) 02 CAL CK 0061

Hon'ble Judges : G.C. Gupta and Asha Arora, JJ.

Bench : Division Bench

Advocate : Ranjan Sinha, Advocate, for the Appellant; Siddharth Das, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Gupta, J.

1. The revenue has come up in appeal against an order dated 24th April, 2009 passed by the ITAT- C Bench, Kolkata, in ITA No. 1724/KOL/2008 to 1727/KOL/2008. The relevant assessment year is 1999-2000. The solitary question of law which arises for determination in the instant case is as follows:--

"Whether on the facts and in the circumstances of the case the Tribunal was justified in law in deleting the addition of cess on green leaf for an amount of Rs. 56,92,991/- when cess is payable only on production of green leaf which is 100% agricultural activity and not an admissible deduction under income chargeable to tax and more so when judgment reported in , 289 ITR 422 is completely in favour of addition?"

2. The facts and circumstances leading up to the instant appeal are as follows:--

"The assessee company is engaged in the business of growing, manufacture and sale of tea. The assessee filed return for the assessment year 1999-2000 which was assessed under Section 143(1) by the assessing officer. Subsequently, the

assessing officer reopened the case under Section 147 on the ground that the cess on green leaf paid by the assessee is not deductible as expenditure for determination of 100% of composite income of growing, manufacturing and selling of tea. The assessee had claimed the expenditure in the profit and loss account as a part of the business expense."

3. The assessing officer by his order dated 19th December 2006, completed the assessment under Section 143(3)/147 of the Income Tax Act and disallowed the expenditure of Rs. 56,92,991/- on account of cess on green leaf paid by the assessee. The reasoning given by the assessing officer is as follows:

"Scrutiny of records reveals that an amount of Rs. 56,92,991/- being cess on green leaf was debited in the P & L account. Cess on green leaf is purely an agricultural expenditure and the same was deductible from 60% of composite income. While computing the composite income the said expenditure was not disallowed."

4. The learned CIT(A) by an order dated 25th June 2008 deleted the addition made by the assessing officer. In doing so, the learned CIT(A) took note of the judgment of this court in CIT v. AFT Industries Ltd. reported in , 270 ITR 167.

5. The revenue appealed unsuccessfully before the Tribunal. The revenue is, once again, in appeal before this Court.

6. To fully appreciate the rival contentions it is necessary to reproduce Rule 8 of the Income Tax Rules, 1962, which reads as follows:--

"Income from the manufacture of tea.

8. (1) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and forty percent of such income shall be deemed to be income liable to tax.

(2) In computing such income an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, if such area has not previously been abandoned 11[, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of clause (30) of section 10, is not includible in the total income."

7. Mr. Das learned Advocate appearing for the assessee relied on the judgement of this Court in the case of AFT Industries (supra) which has been approved by the Apex Court in the case of CIT v. M/s. Apeejay Tea Co. Pvt. Ltd. (Civil Appeal No. 1105 of 2006) vide order dated 6th August 2015. He contended that the expenditure on cess should be allowed as a deduction before computing the composite income under Rule 8 and the apportionment is to be made after the income is so computed.

8. Mr. Sinha learned Advocate appearing for the revenue contended that the addition made by the assessing officer should be sustained. He contended that

cess on green leaf is purely an agricultural expenditure and the same should have been deducted from 60% of the composite income. Therefore according to the learned advocate the composite income should first be apportioned and then the cess should be deducted from the agricultural income which is 60% of the composite income.

9. In AFT Industries (supra) the Division Bench held as follows:--

"3. ...it appears that in respect of computation of income of tea grown and manufactured, a fiction has been created under which both the agricultural component and the business component of the income would be assessed together for the purpose of computing the income under the Act and only after the computation of the total income, the apportionment is to be made determining 60% as agricultural income as 40% as eligible to tax under the Act. During the process of the computation, all deductions allowable at the time of computation are to be allowed and that was rightly allowed...When by fiction the income is computed as an income under the Act, all deductions as are available both for the agricultural component and for the business component of the income are to be allowed as a natural corollary to the fiction so created. Such deductions, which are allowed in order to arrive at the total income exigible to tax, are to be allowed and the apportionment of the total income so computed is to be made."

10. In M/s. Apeejay Tea Co. (supra), the Revenue unsuccessfully assailed the order of this Court in AFT Industries Ltd. (supra), the Supreme Court dismissed the appeal and upheld the view taken by this Court.

11. In Jorehaut Group Ltd. v. Assistant Commissioner of Income-Tax reported in , (2007) 289 ITR 422, the Gauhati High Court followed the view expressed in Assam Co. Ltd. v. Union of India, , [2005] 275 ITR 609 wherein it was held that the deduction on cess paid on green tea leaves has to be allowed on 100 percent, of the composite income under the Income-tax Act, 1961, and not on 60 percent, of the agricultural income. To be precise the Court in Jorehaut Group (supra) observed as follows:--

"cess on green tea leaves shall be allowed on 100 percent, composite income under the Income Tax Act, 1961, before applying Rule 8 of the Income Tax Rules."

12. In that view of the matter, the question of law formulated is answered in the affirmative and in favour of the assessee.

13. The appeal is, thus dismissed.

Asha Arora, J.—I agree.