(2008) 04 MAD CK 0167

In the Madras High Court

Case No : Tax Case (Appeal) No. 449 of 2004

Commissioner of Income Tax APPELLANT

Vs

Pentagon Industries RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Citation : (2010) 324 ITR 89

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : J. Narayanasamy, for the Appellant; None, for the Respondent

Judgement

K. Raviraja Pandian, J.—The appeal is filed against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai dated October 21, 2003, made in I.T.A. No. 1920/Mds/99. The relevant assessment year is 1996-97. The questions of law on which the appeal was admitted are as follows:

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenditure incurred towards the foreign travel of the managing director as business expenditure when no proof or records were available to claim it as a business expenditure?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in giving a relief of Rs. 6,60,000 when the foreign travel expenses were not incurred wholly and exclusively for business purposes?

2. For the relevant assessment year the assessee filed a return of income declaring the total income of Rs. 4,00,280. The same was processed and the case was taken up for scrutiny. In the course of hearing the assessee filed a revised balance-sheet and profit and loss account on January 29, 1999 by showing the net loss at Rs. 3,82,891. The assessee has claimed Rs. 7,71,884 as foreign travel expenses. The Assessing Officer asked the assessee to explain about the details of the travel, i.e., the name of the person who travelled and the purpose of the travel and as to whether it was relevant to the business of the

assessee, in order to substantiate the claim to deduction. The assessee filed its reply on February 3, 1999. The Assessing Officer, after referring to the note filed by the representative of the assessee, ultimately held that the assessee has not made any business transaction with any foreign firm and on that score disallowed the claim of the appellant.

3. On appeal to the Commissioner of Income Tax (Appeals), the Commissioner of Income Tax (Appeals) has observed that it was stated before the Assessing Officer that the foreign trip was undertaken by the assessee to study the latest technology whereas during the course of hearing of the appeal it was stated that the foreign tour was undertaken for exploring the technology transfer. The lower appellate authority also recorded a finding that there was no evidence to link the foreign trip to the business carried on by the appellant which was manufacturing stabilisers. The matter was, therefore taken on further appeal to the Tribunal. The Tribunal rejected the contentions of the Department and allowed the claim to an extent of Rs. 6,60,000.

4. Heard the learned Counsel on either side and perused the materials available on record.

5. Even from the facts stated above, it is clear that the Assessing Officer has not dealt with the note stated to have been filed before him February 3, 1999. It is also not discernible from the assessment order about the explanation offered by the assessee by his reply dated February 3, 1999, as to the nature of the foreign travel undertaken by him. The reasons stated by the Commissioner of Income Tax (Appeals) and those of the Tribunal are inconsistent with each other. In view of the inconsistency, we do not find it proper to answer the questions of law stated above, on which the appeal was admitted.

6. Though notice has been served on the respondent in this tax case appeal on August 2, 2004, itself, there is no representation on behalf of the respondent.

7. Having regard to the inconsistent reasoning given by the authorities below, in order to meet the ends of justice, we are of the view that the matter has to be heard in detail by the Tribunal with reference to the explanation offered on February 3, 1999, and fresh findings have to be recorded. Hence, the order passed by the Tribunal is hereby set aside and the matter is remitted back to the Tribunal for fresh consideration of the explanation offered by the assessee by way of note dated February 3,1999, and pass appropriate orders. The appeal stands disposed of accordingly. No costs.