
(2010) 09 P&H CK 0356

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Appeal No. 445 of 2010

Commissioner of Income Tax

APPELLANT

Vs

P.R. Packaging Ltd.

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 147, 148, 260A, 32(1)
Income Tax Rules, 1962 — Rule 46A

Citation : (2011) 339 ITR 281

Hon'ble Judges : Ajay Kumar Mittal, J;A.K. Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This appeal u/s 260A of the income tax Act, 1961 (for short "the Act"), has been filed by the Revenue against the order dated November 13, 2009, passed by the income tax Appellate Tribunal, Delhi Bench "F", New Delhi (in short "the Tribunal") in income tax Appeal No. 2700/Del/2009, in respect of the assessment year 2005-06.

2. The facts of the case are that the respondent, i.e., the assessee-company is engaged in manufacture of thermocol packing/duplex cartons and corrugated boxes. For the assessment year 2005-06, the assessee filed return of income declaring total income of Rs. nil. The return was taken up for scrutiny. The assessment was completed u/s 143(3) of the Act, vide order dated December 31, 2007, at an income of Rs. 39,65,890. The Assessing Officer made an addition of Rs. 2,57,417 on account of deferred revenue expenditure on the ground that the assessee had failed to furnish any evidence in support of its claim despite repeated opportunities. The Assessing Officer made another addition of Rs. 50,18,599 on account of bogus purchases as it was observed that the assessee had failed to prove the genuineness of the said purchases. The assessee filed an appeal before the Commissioner of income tax (Appeals), Faridabad (in short "the CIT(A)"). The Commissioner of income tax (Appeals), vide order dated

March 31, 2009, partly allowed the appeal of the assessee giving relief of Rs. 56,16,739 and confirming the addition of Rs. 1,14,981 besides enhancing the income of the assessee by Rs. 5,120 subject to the directions in paragraph 20.1 of its order for verification of set off of the brought forward unabsorbed business loss/depreciation.

3. The Revenue preferred an appeal before the Tribunal. The addition of the first amount indicated above, i.e., Rs. 2,57,417 is concerned, the Tribunal upheld the order of the Commissioner of income tax (Appeals) in that behalf. In regard to the addition of Rs. 50,18,599 made by the Assessing Officer which was deleted by the Commissioner of income tax (Appeals), the Tribunal concurred with the view of the Commissioner of income tax (Appeals) and upheld the order of the said authority.

4. Qua the disallowance of Rs. 50,000 which the assessee had paid as loan processing fee, by the Assessing Officer, which was deleted by the Commissioner of income tax (Appeals) after relying on the decision of the Madras High Court in CIT v. Sri Meenakshi Mills Ltd. (2007) 290 ITR 107 (Mad), the Tribunal put its seal of affirmation. The order with regard to the additions of amounts of Rs. 18,859 on account of the employees' contribution to the provident fund and Rs. 21,010 on account of ISO expenses even though the expenditure incurred were capital expenditure, passed by the Assessing Officer and deleted by the Commissioner of income tax (Appeals) was also upheld by the Tribunal by order dated November 13, 2009.

5. This is how the Revenue has claimed that the following substantial questions of law arise in this appeal for consideration of this court :

1. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was right in law in upholding the order of the learned Commissioner of income tax (Appeals) in deleting the addition of Rs. 2,57,417 made by the Assessing Officer on account of deferred revenue expenditure even though the assessee had failed to furnish any evidence/justification in support of its claim despite repeated opportunities provided and is contrary to the decision of the hon'ble Madras High Court in the case of The Commissioner of Income Tax Vs. Ashoka Betelnut Co. P. Ltd., wherein their Lordships had observed that the said provisions permit the writing off of the deficiencies between the written down value in the money realised on the assets which is sold, discarded, demolished or destroyed in the previous year together with the amount of scrap value, if less than the written down value ?

2. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was right in law in upholding the order of the learned Commissioner of income tax (Appeals) in deleting the addition of Rs. 50,18,599 made by the Assessing Officer on account of bogus purchases even though the assessee had failed to prove the genuineness of these purchases ?

6. We have heard learned counsel for the Revenue-appellant and have also gone

through the record.

7. The appeal relates to the deletion of Rs. 2,57,417 and Rs. 50,18,599 made by the Commissioner of income tax (Appeals) which has been upheld by the Tribunal.

Regarding question No. 1

8. The Commissioner of income tax (Appeals) deleted the addition of Rs. 2,57,417 which was made by the Assessing Officer on account of deferred revenue expenditure with the observations that in the reopened assessment proceedings u/s 147 of the Act for the assessment years 2001-02 and 2002-03, the Assessing Officer had taken a view that the assessee was to be allowed depreciation on moulds and dyes as against the deferred revenue expenditure claimed by him. It was further observed that on the basis of the written down value so worked out, the depreciation allowable during the assessment year under reference would be Rs. 9,60,358. The Commissioner of income tax (Appeals) further observed that in the light of the said position, deduction was to be allowed by way of depreciation or by invoking section 32(1)(iii) of the Act and since depreciation was found to be higher than the deduction claimed by the assessee at Rs. 6,43,542, disallowance of Rs. 2,57,417 being 40 per cent, of Rs. 6,43,542 was not called for. The relevant observations of the Commissioner of income tax (Appeals), while deleting the aforesaid deduction as recorded in paragraph 9.5 of its order, are as under :

I have carefully gone through the assessment order, written submissions and heard the learned authorised representative at length coupled with the fact that the Assessing Officer has not contributed any assistance to rebut or oppose the detailed facts and the position of law stated in the written submissions "and reproduced above. It cannot be disputed that the appellant has failed to substantiate the correctness of the explanation rendered before the Assessing Officer that scrap value of the old dyes/moulds are adjusted in the cost of the new dyes/moulds, but the fact that dyes and moulds are purchased year after year have not been disputed. The matter needs to be examined as to what deduction is admissible on facts and in law, to controvert the assessee's claim of deferred revenue expenditure at Rs. 6,43,542. Though the Assessing Officer has opted to invoke the provisions of section 32(1)(iii) of the Act, but it is evident that he has not understood the provisions of section 32(1)(iii) in its true import. The learned authorised representative has given the working of Rs. 6,43,542 as mentioned below :

Rs.

Purchases of dyes/moulds during the year Rs. 15,43,771; 20 per cent, thereof

3,08,754

20 per cent, of the purchases for the assessment year 2004-05 (Rs.1 1,53,049)

2,30,610

20 per cent, of the purchases for the assessment year 2003-04 (Rs. 5,58,823)

1,04,178

Total

6,43,542

However, if depreciation is to be allowed in the manner provided u/s 32(1)(iii) and as decided by the Assessing Officer, it is found that deduction would work out at Rs. 8,56,373, as demonstrated below :

Rs.

B. F. value of dyes and moulds is Rs. 9,12,715 as per the balance-sheet (page 16 of the paper book) and if 40 per cent, of it is disallowed, 60 per cent, of it would work out at

5,47,629.

In addition, additions of dyes/moulds during the year are at

15,43,771

(6 of the paper book and depreciation as per Appendix 1 of the income tax Rules would work at

3,08,744

Total

8,56,373

The learned authorised representative has also contended that the Assessing Officer has reopened proceedings u/s 148 for the assessment years 2000-01 and 2002-03 and held that the assessee is to be allowed depreciation instead of deferred revenue expenditure claimed by the assessee. It is pleaded that the Department cannot adopt contradictory stand in different assessment years and in case, depreciation is allowed during the year under consideration on the written down value/cost from March 31, 2002, onwards, depreciation to be allowed would work out at Rs. 9,60,358. The learned authorised representative has also contended that in fact, expenses on the cost of dyes/moulds is revenue expenditure, as it represents replacements and it does not constitute plant and machinery in its own form and has thus claimed that the correct amount of deduction as revenue expenditure would be admissible at Rs. 24,56,486 qua Rs. 6,43,542 claimed by the assessee. The Assessing Officer has not controverted the correctness of the abovementioned calculations given in the written submissions. In my considered opinion, on the facts and circumstances of the case and the position of law, the Assessing Officer has to adopt a consistent approach and deduction is to be claimed in accordance with law, inter alia, either by invoking section 32(1)(ii) or by allowing depreciation, the deduction allowable

would work out at a higher amount than deduction claimed at Rs. 6,43,542 claimed as deferred revenue expenditure. Yet I am not inclined to allow deduction of the higher amount than what is claimed in the return of income, but in my firm opinion, on the facts of the case, no addition is called for from the claim of deduction made at Rs. 6,43,542. Accordingly, the addition of Rs. 2,57,417 is cancelled. Ground No. 2 is thus, allowed.

9. The Tribunal affirmed the order of the Commissioner of income tax (Appeals) deleting the deduction.

10. No error or perversity could be pointed out by the counsel for the appellant in the above finding of the Commissioner of income tax (Appeals) as affirmed by the Tribunal. Thus, it cannot be said to be a substantial question of law.

Regarding question No. 2

11. This question relates to the addition of Rs. 50,18,599 made by the Assessing Officer on account of bogus purchases. The Commissioner of income tax (Appeals) after elaborate discussion had allowed the application filed by the assessee under rule 46A of the income tax Rules, 1962, whereby the assessee had furnished all relevant documents relating to the genuineness of the purchases made by it from M/s. Rajesh Dyes and Chemicals, M/s. Sameer Enterprises, M/s. Sharma Traders and M/s. Aneja Papers. The Commissioner of income tax (Appeals) after analyzing the evidence and the documents produced by the assessee had concluded that all the aforesaid four parties were assessed to income tax and were having their permanent account numbers with the Department. It was also recorded that the assessee had made payments to the aforesaid parties by account payee's cheques. The findings by the Commissioner of income tax (Appeals) have been recorded in detail in paragraph Nos. 10.3 to 10.10 of its order. The Commissioner of income tax (Appeals) after appreciating the evidence on record had arrived at the conclusion that the purchases made by the assessee were genuine and not bogus as viewed by the Assessing Officer. The aforesaid findings of the Commissioner of income tax (Appeals) recorded were affirmed in appeal by the Tribunal. While affirming the findings, the Tribunal observed as under :

The learned Commissioner of income tax (Appeals) has elaborately discussed and analysed the various evidence and materials in support of purchases made from various parties, and has considered the respective evidence in support of the contention that all the purchases were genuine and have been duly confirmed by the respective parties. In the light of the detailed verification made by the learned Commissioner of income tax (Appeals) and in the absence of any material rebutting the learned Commissioner of income tax (Appeals)'s finding, we are inclined to uphold the order of the learned Commissioner of income tax (Appeals) in deleting the addition of Rs. 50,18,599 made on account of bogus purchases.

12. The appellate authorities on appreciation of material on record had arrived at

a conclusion that the purchases from the aforesaid parties were genuine.

13. Learned counsel for the appellant-Revenue could not show or point out any material or error of law in the findings of fact so arrived at by the appellate authorities below to persuade this court to interfere therewith in any manner.

14. In view of the above, no substantial question of law as claimed by the Revenue arises for determination by this court. The appeal is dismissed.