(2009) 04 MAD CK 0046

In the Madras High Court

Case No : Tax Case (Appeals) No''s. 1129 to 1132 of 2006

Commissioner of Income Tax APPELLANT

Vs

Ramco Industries Ltd. RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:
Income Tax Act, 1961 — Section 30, 31, 32, 37(3), 37(4)

Citation : (2009) 316 ITR 434 : (2009) 184 TAXMAN 457

Hon'ble Judges : M.M. Sundresh, J;K. Raviraja Pandian, J

Bench : Division Bench

Advocate : Pushya Sitaraman, for the Appellant; P.J. Rishikesh, for the Respondent

Judgement

K. Raviraja Pandian, J.—The Revenue on appeal against the order of the Income Tax Appellate Tribunal, dated October 7, 2005, passed

in ITA Nos. 950, 951, 1044, 1128/Mds/2000 in respect of the assessment years 1995-96 and 1996-97.

2. For the assessment years 1995-96 and 1996-97, the assessee filed its return of income. The Assessing Officer, inter alia, disallowed the rent

paid for guest house u/s 37(4); expenditure on sieve cylinder and motor and templates as capital expenditure. The Assessing Officer also held that

sales tax and excise duty elements are to be included in the total turnover for the purpose of calculation of deduction u/s 80HHC. On appeal, the

Commissioner of Income Tax (Appeals) confirmed the disallowance on guest house expenditure, upheld the action of the Assessing Officer on the

issue of inclusion of sales tax and excise duty in the total turnover for the purpose of Section 80HHC, and decided the issue regarding replacement

of machinery and templates in favour of the assessee. The Tribunal on appeal held all the above issues in favour of the assessee. The correctness of

the same is now canvassed before this Court in these appeals by formulating the following questions of law:

1. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that expenditure on renting and maintaining a guest house is

allowable as a business expenditure?

2. Whether, in the facts and circumstances of the case, the Tribunal was right in excluding sales tax and excise duty from the total turnover for the

purpose of calculation of benefit u/s 80HHC?

3. Whether, in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on replacement of

machinery as revenue expenditure?

4. Whether, in the facts and circumstances of the case, the Tribunal was right in allowing a deduction of the amounts spent on purchase of

templates as a revenue expenditure?

3. We have heard the arguments of the learned Counsel on either side and perused the materials available on record.

4. The first question of law, viz., whether the expenditure on renting and maintaining a guest house is allowable as a business expenditure has been

decided in favour of the assessee by this Court in the case of Commissioner of Income Tax Vs. South India Viscose Ltd., . The Supreme Court

reversed the same and held in favour of the Revenue in the case of Britannia Industries Ltd. Vs. Commissioner of Income Tax, West Bengal,

Kolkata and Another, , wherein the Supreme Court has held as follows (headnote):

While the expression ''premises and buildings'' in Sections 30 and 32 of the Income Tax Act, 1961, and the expression ''residential

accommodation including any accommodation in the nature of guest house'' in sub-sections (3), (4) and (5) of Section 37 can be similarly

interpreted, a distinction has been sought to be introduced for the purpose of Section 37 by specifying the nature of the building to be a guest

house. The intention of the Legislature is clear and unambiguous : the intention was to exclude from deduction the expenses towards rents, repairs

and also maintenance of premises/accommodation used for the purpose of a guest house of the nature indicated in Sub-section (4) of Section 37.

If the Legislature had intended that deduction would be allowable in respect of all types of buildings/accommodation used for the purpose of the

business or profession, then the Legislature would not have felt the need to amend the provisions of Section 37 so as to make a definite distinction

with regard to buildings used as guest houses as defined in Section 37(5) and the provisions of Sections 31 and 32 would have been sufficient for

that purpose.

When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give a meaning which

would cause violence to the provisions of the statute.

5. Hence, the first question of law is to be answered in favour of the Revenue, against the assessee and answered as such.

6. The second question of law, viz., exclusion of sales tax and excise duty from the total turnover for the purpose of calculation of the benefit u/s

80HHC, is covered by the decision of the Supreme Court in the case of Commissioner of Income Tax, Coimbatore Vs. Lakshmi Machine Works,

, wherein the Supreme Court has held as follows (headnote):

The principal reason for enacting a formula in Section 80HHC of the Income Tax Act, 1961, is to disallow a part of the concession thereunder

when the entire deduction claimed cannot be regarded as relating to exports. Therefore, while interpreting the words ''total turnover'' in the formula

in Section 80HHC one has to give a schematic interpretation. The various amendments made therein show that receipts by way of brokerage,

commission, interest, rent, etc., do not form part of business profits as they have no nexus with the activity of export. The amendments made from

time to time indicate that they became necessary in order to make the formula workable. If so, excise duty and sales tax also cannot form part of

the ''total turnover'' u/s 80HHC(3): otherwise, the formula becomes unworkable.

7. In respect of the third and fourth questions of law, in allowing deduction of the amounts spent on replacement of machinery as revenue

expenditure and purchase of templates as a revenue expenditure, they are covered by the decision of the Supreme Court in the case of

Commissioner of Income Tax Vs. Ramaraju Surgical Cotton Mills, , wherein it was argued before the Supreme Court that replacement of assets

without increasing the production capacity would amount to revenue expenditure. However, there was no material regarding the production

capacity remaining constant even after replacement. On those factual situation, the apex court remanded the matter back to the Commissioner

(Appeals) to decide afresh. In these cases also, all the orders have been passed only following the earlier decision of this Court in The

Commissioner of Income Tax Vs. Janakiram Mills Ltd., . The matter requires to be remitted back to the Commissioner (Appeals) for

reconsideration as per the law laid down by the apex court in the case of Commissioner of Income Tax Vs. Ramaraju Surgical Cotton Mills, .

Hence, in respect of the third and fourth questions of law, the matter is remitted back to the Commissioner of Income Tax (Appeals). The appeals

are disposed of accordingly.