(2009) 03 RAJ CK 0076

In the Rajasthan High Court

Commissioner of Income Tax APPELLANT

Vs

Saraf Textile Mills RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:
Income Tax Act, 1961 — Section 35B

Citation : (2009) 03 RAJ CK 0076

Hon'ble Judges : R.C. Gandhi, Acting C.J.;M.N. Bhandari, J

Bench : Division Bench

Judgement

1. The Tribunal, Jaipur Bench, Jaipur has referred the following question of law for our answer pursuant to RA No. 335/Jp/1988 arising out of ITA No. 971/Jp/1983 for the assessment year 1976-77:

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee was entitled to weighted deduction u/s 35B of the Income Tax Act, 1961, in respect of the following expenses:

1. Air freight Rs. 94,037 2. Transport freight Rs. 2,995 3. Insurance Rs. 7,985 4. Interest paid to banks Rs. 71,206

In our view referable question of law does arise and we, therefore, draw up the statement of the case.

2.The brief facts relating to the case are that the assessee claimed weighted deduction u/s 35B of Income Tax Act in respect of various expenses incurred by it. The assessing authority held that following expenses did not qualify for the deduction u/s 35B:

1. Air freight Rs. 94,037 2. Transport freight Rs. 2,995 3. Insurance Rs. 7,985 4. Interest paid to banks Rs. 71,206

3. On an appeal by the assessee the Commissioner (Appeals) reversed the order of the assessing authority and directed to allow the weighted deduction on all the four abovenoted amounts. Aggrieved by the order passed by the Tribunal (sic--

authority) the appellant filed an appeal before the Tribunal. The Tribunal relying on a judgment in the case of Associated Stone Industries in ITA Nos. 1027/ Jp/1981 and 1028/Jp/1981 held that the air freight and transport freight qualify for weighted deduction. The assessees claim of weighted deduction on insurance and interest to bank was also accepted following the judgment in the case (2001) 71 TTJ 184 Aggrieved by the order of the Tribunal, revenue prayed for reference of the question quoted above, which is then referred to this Court.

4. The counsel appearing for the revenue submits that the judgment of the Tribunal in the case of Associated Stone Industries (supra) was referred to the High Court in DB IT Ref. No. 54 of 1985 CIT v. Associated Stone Industries, wherein it was reversed vide the order dated 25-1-2002. On the strength of the aforesaid judgment it is submitted that the reference regarding the air freight and transport freight may be decided in favour of revenue and thereby the benefit of weighted deduction on air freight and transport freight should be disallowed. It is further submitted that even the benefit of weighted deduction on insurance as well as interest paid to the banks needs to be disallowed, in view of the judgment of Bombay High Court in the case of KEC International Ltd. v. CIT dated 13-1-2009. Copy of the said judgment has been supplied for perusal and is kept on record.

5. Learned Counsel appearing for the assessee submits that it is not doubted that the Tribunals judgment in the case of Associated Stone Industries (supra) was reversed by this Court yet assessee is entitled for weighted deduction on air freight as the said judgment was not in reference to the export of the articles whereas present case pertains to export business. It is stated that even if reference is answered in favour of the revenue on the ground that the judgment of the Tribunal in the case of Associated Stone Industries (supra) has been reversed then also the factual aspect pertaining to air freight has not been discussed by Commissioner (Appeals) as well as by the Tribunal. Hence, the matter may be remanded in regard to the air freight for afresh adjudication on the facts of this case. It is stated that the assessee is not disputing the decision of the Bombay High Court in regards to insurance and interest paid to bank.

6.We have considered the rival submissions of the parties and scanned the matter carefully.

On perusal of the judgment in the case of CIT v. Associated Stone Industries (supra) so decided by the Division Bench of this Court, order of the Tribunal has been reversed. Since the judgment of the Tribunal has been reversed and it has been decided in favour of revenue, thus it becomes clear that the order of the Tribunal based on its earlier decision in the case Of Associated Stone Industries (supra) cannot hold field. Thus, the benefit of weighted deduction u/s 35B of the Income Tax Act cannot be made admissible to the assessee on the air freight as well as on transport freight pursuant to judgment in the case of Associated Stone Industries (supra). Accordingly, the reference is answered in regard to the above two issues in favour of the revenue and against the assessee. However, it is made clear that reference has been answered in favour of the revenue only for the reason that the Tribunal allowed weighted deduction on air freight and transport freight taking into consideration its earlier judgment in the case of Associated Stone Industries (supra) and the said judgment of the Tribunal, having been reversed by the High Court, the reference in pursuance to the judgment of the Tribunal has been decided but looking to the fact that independent to the judgment in the case of Associated Stone Industries (supra), if the assessee is entitled for weighted deduction on air freight keeping in mind the facts of this case, which have not been taken into consideration by the Commissioner (Appeals) and Tribunal. The matter needs to be heard by Commissioner (Appeals) afresh and adjudicate the matter in regard to the air freight taking into consideration the facts of this case.

7. Since the counsel for the assessee has not disputed revenues case towards interest to the bank and insurance is to be decided in favour of revenue, the claim of the assessee for weighted deduction u/s 35B of the Income Tax Act on the aforesaid items cannot be accepted and accordingly, the issue framed on two aforesaid items is decided in favour of the revenue and against the assessee. This issue has otherwise been decided by the Bombay High Court in its judgment dated 13-1-2009 and we subscribe to the view taken by the Bombay High Court and accordingly, we also hold that on insurance as well as interest paid to the bank cannot attract Section 35B of the Income Tax Act for weighted deduction.

The Income Tax reference is, accordingly, disposed of.

