(2007) 04 MAD CK 0084

In the Madras High Court

Case No : T.C. (A) No''s. 327 to 329 of 2007

Commissioner of Income Tax APPELLANT

Vs

T.V.S. Sewing Needles Ltd. RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:
Income Tax Act, 1961 — Section 2(11), 260A, 32(1), 41(2), 80HHC

Citation : (2008) 302 ITR 13

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : J. Naresh Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The above tax case appeals are directed against the order of the Income Tax Appellate Tribunal dated March 17, 2006, made in I.T.A. Nos. 1121/Mds/2002, 415/Mds/2000 and 1167/Mds/2001 for the assessment years 1997-98, 1995-96 and 1996-97, respectively, raising the following substantial questions of law:

1. Whether, on 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 ?

2. Whether, on the facts and circumstances of the case, replacement of independent complete machinery can be treated as revenue expenditure ?

3. Whether, on the facts and circumstances of the case, the Tribunal was right in deciding the issue of replacement of machinery without going into the concept of block of assets ?

4. Whether, on the facts and circumstances of the case, the Tribunal was right in holding that excise duty and sales tax collection does not form part of the turnover, for the purpose of calculation of deduction u/s 80HHC?

2. The Revenue is the appellant in all the appeals. The claims of the asses-see were with respect to the expenditure incurred on replacement of machinery as revenue expenditure. The assessee also claimed deduction u/s 80HHC of the Income Tax Act, 1961 (hereinafter referred to as "the Act") but the Assessing Officer recomputed the same after holding that sales tax and excise duty were part of the total turnover.

3. Against the said order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who decided both the issues in favour of the assessee, which were confirmed by the Income Tax Appellate Tribunal, on appeal at the instance of the Revenue. Aggrieved by the same, the Revenue has preferred the appeals raising the common questions of law referred to above.

4. Mr. J. Naresh Kumar, learned standing counsel for the appellant, fairly concedes that the issues raised in these appeals are covered against the Revenue by the decisions of this Court, viz., The Commissioner of Income Tax Vs. Janakiram Mills Ltd., , with regard to expenditure incurred on replacement of machinery and The Commissioner of Income Tax, Tamilnadu-I, Madras Vs. Wheels India Limited, and The Commissioner of Income Tax Vs. Sundaram Fasteners Ltd., , which were followed in Commissioner of Income Tax Vs. India Pistons Limited, , with regard to the exclusion of excise duty and sales tax collection from the total turnover for the purpose of calculating deduction u/s 80HHC.

5. With regard to the first three questions, the issue whether the expenditure on replacement of machinery is capital or revenue is not determined by the treatment given in the books of account or in the balance-sheet. The claim has to be determined only by the provisions of the Act and not by the accounting practice of the assessee. In the instant case, the Appellate Tribunal, finding that the replacement of machinery is revenue expenditure, held that the claim of the assessee cannot be disallowed.

6. This court in The Commissioner of Income Tax Vs. Janakiram Mills Ltd., held that all plant and machinery put together amounts to a complete spinning mill which is capable of manufacturing yarn and hence, each replaced machine could not be considered as an independent one and no intermediate marketable product was produced. In view of the ratio laid down by this Court in the decision cited supra, we hold that the expenditure on replacement of machinery is revenue expenditure and, therefore, the Tribunal was right in allowing the claim of the assessee.

7. With regard to the concept of block of assets, this Court in The Commissioner of Income Tax Vs. Janakiram Mills Ltd., , explained the principle or object of introducing the concept of "block of assets" in detail, in the following words (page 427):

Regarding the argument relating to ''block of assets'', it is the claim of learned Counsel for the assessees that the said principle or object of introduction of the above concept is totally not applicable relating to the nature of expenditure incurred by the respondent. These provisions were introduced from April 2, 1987, as defined u/s 2(11) of the Income Tax Act, 1961, and they are in operation on different field. It is stated that they were intended to replace the provisions on depreciation of capital assets. The block of assets concept was introduced with a view to streamline the excess depreciation allowed and to allow terminal depreciation. When the block of assets concept was introduced, the provisions relating to terminal depreciation and the profit resulting from the sale of assets, which were originally considered under sections 32(1)(iii) and 41(2), were suitably amended to fall in line with the proposed simplification of the concept of block of assets. The circular describing the concept of block of assets is explained by the Central Board of Direct Taxes by Circular No. 469, dated September 23, 1986, reported in [1986] 162 ITR 21, 24. In the instant case, no acquisition of any new asset, much less capital of any enduring advantage resulted to the assessee-respondent. The assessees replaced the worn out part of machineries without discontinuing their production activities. No claim for depreciation was ever made before any authorities either by the assessees or by the Revenue to consider the question as block of assets nor was there any necessity to do so. The Department did not raise any objection before the Tribunal regarding the claim of allowance on the premise of the block of assets concept. It is, therefore, stated that such question does not arise out of the order of the Appellate Tribunal for considering the same by this Court u/s 260A.

8. In the instant case also, the assessee had only replaced certain machinery without discontinuing their production activities and we have already held that there was no acquisition of any new asset, much less capital of any enduring advantage. A perusal of the orders of the authorities below show that no claim for depreciation was ever made before any authorities by the assessee nor the Revenue raised the question of block of assets. Therefore, applying the law laid down by the decision cited supra, such question does not arise out of the order of the Appellate Tribunal for considering the same by this Court u/s 260A of the Act.

9. With regard to the last question, viz., whether the sales tax and excise duty collections are to be excluded from the total turnover for the purpose of calculation of deduction u/s 80HHC, this Court in The Commissioner of Income Tax, Tamilnadu-I, Madras Vs. Wheels India Limited, and The Commissioner of Income Tax Vs. Sundaram Fasteners Ltd., , which were followed in Commissioner of Income Tax Vs. India Pistons Limited, held that it is highly impossible to accept the contention that the term "turnover" would include the excise duty and sales tax components which are all indirect taxes and which the assessee has to collect and pay over to the Government and such statutory dues will not have any element of profit of business and, therefore, the sales tax and excise duty are not to be included in the total turnover while computing the deduction u/s 80HHC.

10. Therefore, finding no substantial questions of law that arise for our consideration in these appeals, the same are dismissed. No costs. Consequently, M.P. Nos. 1 of 2007 are also dismissed.

