
(2015) 01 GUJ CK 0050
In the Gujarat High Court
Case No : Tax Appeal No. 54 of 2015

Commissioner of Income Tax-I	Vs	APPELLANT
Akar Laminators Ltd.		RESPONDENT

Date of Decision : 27-01-2015

Acts Referred:

Citation : (2015) 01 GUJ CK 0050

Hon'ble Judges : S.H. Vora, J.; Jayant M. Patel, J.

Bench : Division Bench

Advocate : Mauna M. Bhatt, for the Appellant

Judgement

Jayant M. Patel, J.—The Revenue has preferred the present appeal on the following substantial questions of law:--

"A. Whether the Appellate Tribunal has substantially erred in law in interpreting the provisions of section 36(1)(vii)?

B. Whether the Appellate Tribunal is right in law in holding that the relevant investments were made out of interest bearing funds despite the fact that the onus is on the assessee to prove that no interest bearing funds were utilized for making investment which yielded exempt income?

C. Whether the Appellate Tribunal is right in law in restricting the travelling expense to Rs. 2,00,000/- instead of Rs. 3,20,160/- disallowed by the Assessing Officer?"

2. We have heard Mrs. Bhatt, learned counsel appearing for the appellant.

3. On question "A", we may record that the similar question came to be considered by us in Tax Appeal No. 51 of 2015 preferred by the Revenue against the order of the Tribunal wherein, this Court observed thus:--

"1. The Revenue has preferred the present appeal on the following substantial question of law;

- Whether the Appellate Tribunal has substantially erred in law in interpreting the provisions of Section 36(1)(vii)? 2. We have heard Ms. Bhatt, learned counsel appearing for the appellant.

3. The relevant facts are that AO for the assessment year of 2000-2001 disallowed the claim of Rs. 2,36,27,765/- as an expenditure on account of reversion pertaining to the transactions on loan, rebate on the ground that such provision could have been made in the earlier year, as the expenditure were incurred during the said period. In Appeal, CIT (Appeals) confirmed the order of AO by observing that the appellant should have shown such expenses as debtors and after that it could be written off. It was also observed that the appellant could not discharge its onus that these are bad debts. The tribunal in further Appeal observed thus; Paragraph 19: "We have heard the rival submissions and perused the material on record. The undisputed fact is that the amount which have been written off were shown as sales in earlier years and were also offered to tax in the respective years. The fact in the year under appeal, the assessee has debited its profit and loss account and the amount has been written off has not been disputed by the Revenue. The Hon'ble Apex Court in the case of T.R.F. Ltd. v. CIT (Supra) has held that after 1st April 1989, it is not necessary for the assessee to establish that the debt has in fact become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. In view of the aforesaid facts and respectfully following the decision of Apex Court cited hereinabove, we are of the view that since the assessee is entitled to its deduction. Accordingly, we delete the addition made by the AO. In the result this ground of the Assessee is allowed."

4. The aforesaid shows that the Tribunal while allowing the appeal of the assessee on the aforesaid points relied upon the decision of the Apex Court in case of TRF (T.R.F.) Limited Vs. Commissioner of Income Tax, Ranchi, . The learned counsel contended that as the bad debt which has been written off related to the expenditure of the earlier year it could not be treated as bad debt in the present assessment year. It was also submitted that no material was produced by the assessee to show that the debt had become irrecoverable and, therefore, the tribunal can be said to have committed an error.

5. The contention cannot be accepted for the simple reason that the tribunal by referring to the decision of the Apex Court in case of TRF Limited (Supra), has observed that it is not necessary for the assessee to establish that the debt had in fact become irrecoverable. On the aspects of expenditure of the previous year not shown as debt, we do not find that the tribunal has committed error in consideration thereof because the tribunal has clearly recorded that the year under appeal, the assessee has debited its profit and loss account and the amount has been written off as not been disputed by the Revenue.

6. We do not find any substantial question of law as sought to be canvassed.

7. In view of above, the present appeal is meritless and hence the same stands

dismissed."

4. Under the circumstances, we do not find any substantial question of law would arise for consideration, as sought to be canvassed.

5. On question "B", the A.O. disallowed the interest on the ground that borrowed money was diverted to the sister concern. In appeal, C.I.T. (A), confirmed the view of A.O. The Tribunal in further appeal, at paragraph No. 74, observed thus:--

"74. We have heard the rival submissions and perused the material on record. Before us, Ld. A.R. has submitted that the investments were made in earlier years and in the year the investments were made, Assessee was having interest free funds and no interest bearing funds have been used for making investments. Before us, the Assessee has not placed any material on record to demonstrate the availability of interest free funds or the cash flow statement in its support. We also find that the neither A.O. nor CIT(A) has given any finding with respect to availability of interest free funds in the year of investments. In such circumstances, we feel that the issue needs to be reexamined at the end of A.O. We therefore remit the issue to the file of A.O. to decide the issue de-novo in the light of the contentions made by the Assessee and the decision relied by him and thereafter decide the issue as per law. Needless to state that A.O. shall grant adequate opportunity of hearing to Assessee. Thus, this ground is allowed for statistical purposes.

The next ground of appeal relates to the confirming of disallowance of Rs. 39,50,678/- on account of sundry balance written off."

6. The aforesaid shows that the Tribunal has remanded the matter to the A.O. to decide the issue de-novo. In our view, the discretion has been exercised by the Tribunal for which, it has jurisdiction on the facts and when the discretion has been exercised by the Tribunal, we do not find any substantial question of law would arise for consideration, as sought to be canvassed.

7. On question "C", the A.O. disallowed the claim towards travelling expenses to the extent of Rs. 3,20,160/-. In appeal, C.I.T.(A) confirmed the order of A.O. but the Tribunal, which is the ultimate fact finding authority, assessed disallowance of Rs. 2 lacs. Resultantly, if the difference is considered, it would be Rs. 1,20,000/- and if the net amount as per the order of the Tribunal is considered, it would be Rs. 2 lacs.

8. Learned counsel for the appellant is not in a position to dispute that if the subject matter is less than Rs. 5 lacs, the appeal may not be preferred before this Court. However, she submitted that if the subject matter of questions A, B and C is considered, it would be more than Rs. 5 lacs and, therefore, the appeal has been rightly preferred.

9. Even if we consider that when the appeal was preferred on questions A, B and C, the subject matter had exceeded to Rs. 5 lacs, but, in view of the observations made by us hereinabove on questions A and B, such aspect would not arise. So

far as question "C" is concerned, as such, it is a finding of fact by the best judgment arrived at by the Tribunal.

10. Under the circumstances, we do not find any substantial question of law would arise for consideration, as sought to be canvassed. Apart from the above aspect, the subject matter, in any case, would be reduced for question "C" as less than Rs. 5 lacs.

11. In view of the above, the appeal is meritless. Hence, dismissed.