(2015) 04 CAL CK 0028

In the Calcutta High Court

Case No : ITR Nos. 2 and 8 of 2005

Duncan International Ltd. and Others — APPELLANT

Vs

C.I.T., W.B. - IV and Others — RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Citation : (2015) 232 TAXMAN 570

Hon'ble Judges : G.C. Gupta, J;Arindam Sinha, J

Bench : Division Bench

Advocate : J.P. Khaitan, Senior Advocate, P. Bag, P. Jhunjhunwala and A.K. Dey, for the Appellant; R.K. Sinha and Nizamuddina, Advocates for the Respondent

Judgement

1. The Court: Briefly stated, the questions of law being the subject matter of this reference, arise out of the facts and circumstances as follows:-

"The assessee has been trading with Messrs. White Lamb and Finlay Inc. of U.S.A. for a long time and was exporting jute goods to them regularly on 120/150 days D.A. basis. However, in respect of shipments made from 27th July, 1978 covered by 6 bills aggregating to Rs. 22,98,172.20, the foreign Company failed to honour the bills on presentation even after extending the due dates at their request in January and February, 1979."

2. The assessee, in the circumstances, wrote off the aforesaid sum of Rs. 22,98,172.25p. The foreign buyer was declared insolvent on 14th April, 1980 though the proceedings had started on 26th July, 1979. The amount was actually written off on 30th September, 1979 corresponding to assessment year 1980-81.

3. The deduction on account of bad debt, however, was not allowed on the ground that the assessee had failed to establish that the debt had become irrecoverable.

4. The assessee, in the circumstances, once again claimed deduction in the assessment year 1984-85 which was also disallowed. In both the matters,

pursuant to the directions issued under section 256(2), two separate references were made by the learned Tribunal. The question of law which arises for consideration is whether the debt written off during the assessment year 1980-81 can be allowed to be deducted either in the assessment year 1980-81 or during the year 1984-85 as claimed by the assessee.

5. Our attention was drawn by Mr. Khaitan, learned Senior advocate appearing for the assessee to a judgement of the Bombay High Court in the case of Karamsey Govindji, Bombay Vs. Commissioner of Income Tax, Bombay City, (1957) 31 ITR 953 . What had happened in that case was that the assessee had advanced a sum of Rs. 70,000/- to a film producer without security in 1945 and 1946. The amount was written off by him as bad debt in November, 1947. The debtor was adjudicated insolvent in July, 1948. There was evidence to show that before the amount was written off by the assessee, the debtor had produced a film and the writing off took place even before the debtor had exploited the film produced by him. The Bombay High Court held that the omission on part of the Income tax authorities to permit the deduction could not be said to be bad because the debt had not really become bad in 1947.

6. The Division Bench was, however, of the opinion that the position of law with regard to the bad debts was difficult for the assessee. The aforesaid opinion was worded as follows:-

"The present income-tax law with regard to bad debts makes the position of the assessee extremely difficult. He may write off a debt in a particular year and may claim it and the claim may be disallowed. In the next year he cannot make that claim because it would be urged against him that he did not write off the debt in that year. Therefore, the assessee always finds himself on the horns of a dilemma and it is the duty of the Department to take a sympathetic view of the matter if in fact the debt was never recovered. Therefore, if the debt was not allowed to the assessee in the year of account, there is no reason why the Department should not consider allowing him this debt in the next year when admittedly the debt became irrecoverable, although the assessee may not have written it off in that year."

7. The aforesaid judgment was rendered by the Bombay High Court while the Act of 1922 was in force. Immediately after the judgment no reaction was however shown by the Legislature. But in the Act of 1961 in Sub-section 2 of Section 36, Clause (iii) was added which reads as follows:-

"(iii) any such debt, or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year, but the Income-tax Officer had not allowed it to be deducted on the ground that it had not been established to have become a bad debt in that year."

8. The provisions appearing in Clause (vii) of Sub-section 1 of Section 36 requiring the assessee to satisfy twin conditions namely to write off the debt and to establish that the debt has become irrecoverable are subject to the provisions

contained in Sub-section 2. Therefore, the rigour of Clause (vii) of Sub-section 1 of Section 36 is relaxed by Clause (iii) of Sub-section 2 of Section 36.

9. In that view of the matter, there can be no real objection, nor has Md. Nizumuddin urged any, to the deduction being allowed on account of bad debt either in the assessment year 1980-81 or in the assessment year 1984-85 though strictly speaking Clause (iii) of Sub-section 2 permits deduction in a subsequent period. But considering that the assessment in the year 1980-81 is also open in the sense that the reference is pending before us, we think proper course would be to permit the bad debt in the assessment year 1980-81 itself. Any other view would involve the assessee in unnecessary prejudice. As of date, nobody can doubt the debt had become bad in the assessment year 1980-81. The assessee did not have any doubt when he wrote it off. We find that Reserve Bank of India has also, subsequent to the aforesaid assessment year, permitted the assessee to write off the amount. When law permits the assessee to get the deduction, there is no reason why the assessee should not be given the deduction in the assessment year 1980-81 itself. Any other course would involve the assessee in the liability for payment of further tax and interest.

10. The reference is, accordingly, answered. Question No. 2 of ITR No. 2 of 2005 reads as follows:-

"(ii) Whether the Tribunal was justified in law in holding that the debt in question had not become bad during the relevant previous year and as such as the said amount cannot be allowed as a bad debt during the relevant year?"

11. The same is answered in negative and in favour of the assessee for reasons discussed above. The other questions need not be answered.

12. In view of the answer given hereinabove, the questions formulated in the connected reference being ITR No. 8 of 2005 need not be answered. Both the references are thus disposed of.

