(2009) 12 MAD CK 0170

In the Madras High Court

Case No : Tax Case (Appeal) No. 35 of 2008

F.L. Smidth Limited (since merged with FL Smidth Private Limited) APPELLANT

Vs

The Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 143(2), 143(3), 37

Citation : (2009) 12 MAD CK 0170

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

Bench : Division Bench

Advocate : Anitha Sumanth, for the Appellant; K. Subramaniam, for the Respondent

Final Decision : Allowed

Judgement

K. Raviraja Pandian, J.—The appeal is filed by the assessee against the order of the Income Tax Appellate Tribunal, Madras ''A'' Bench dated 22.06.2007 in ITA No. 1389/Mds/2006 for the assessment year 2002-03.

2. This appeal was admitted on the following substantial question of law:

Whether on the facts and in the circumstances of the case, the claim for warranty is allowable as deduction while computing the taxable income under the Act?

3. The facts are: The assessee is engaged in the business of design, fabrication, supply of plant and machinery, and supervision of erection and commissioning thereof, for cement plants. The assessee was assessed to income tax regularly and in respect of the assessment year 2002-03, it filed its return of income on 31.10.2002. The return was processed u/s 143(1) of the Income Tax Act and thereafter, taken up for enquiry pursuant to notice u/s 143(2) dated 27.02.2003. The assessment was completed u/s 143(3) by order dated 31.03.2005. The assessee had in respect of the aforesaid previous year written off certain claims

receivable amounting to Rs. 43,02,485/- representing indirect tax refund due which are not realisable. The assessee filed an appeal against the aforesaid assessment before the Commissioner of Income Tax (Appeals) and challenged the disallowances. The Commissioner of Income Tax (Appeals) by his order dated 14.03.2006 confirmed the assessing officer''s order. As regards the appeal filed by the assessee, the Tribunal confirmed the order of the Commissioner of Income Tax (Appeals) in regard to the write off of claims receivable at Rs. 43,02,485/- and also confirmed the disallowance. Thus, the assessee is before us in this appeal.

4. The issue is now settled by the Supreme Court in the case of Rotork Controls India (P) Ltd. Vs. Commissioner of Income Tax, Chennai, , wherein it was held that the warranty became an integral part of the sale price; in other words, the warranty stood attached to the sale price of the product. Warranty provision had to be recognised because the assessee had a present obligation as a result of past events resulting in an outflow of resources and a reliable estimate could be made of the amount of the obligation. The value of the contingent liability like the warrant expense, if properly ascertained and discounted on accrual basis, can be an item of deduction u/s 37 of the Act. The principle of estimation of the contingent liability is not the normal rule. It would depend on the nature of the business, the nature of sales, the nature of the product manufactured and sold and the scientific method of accounting adopted by the assessee. It would also depend upon the historical trend and upon the number of articles produced. A provision is a liability which can be measured only by using a substantial degree of estimation. A provision is recognized when: an enterprise has a present obligation as a result of a past event; (b) it is probable that an outflow of resources will be required to settle the obligation; and (c) a reliable estimate can be made of the amount of the obligation and held that the provision made for warranty in respect of such sophisticated goods would be entitled to deduction from the gross receipts u/s 37 of the Act.

5. Following the said judgment, this Court in the case of CIT III v. FL Smedth Ltd. Tax Case (Appeal) No. 341 of 2004 by order dated 09.06.2009, after extracting paragraph 7 of the judgment of Supreme Court cited supra, answered the question of law in favour of the assessee and against the revenue.

6. It is not in dispute that the facts in this case are similar to the appeal in T.C. No. 341 of 2004. Therefore, following the judgments of the apex Court Rotork Controls India (P) Ltd. Vs. Commissioner of Income Tax, Chennai, , and the Division Bench of this Court, CIT III v. FL Smedth Ltd. Tax Case (Appeal) No. 341 of 2004, the questions of law are answered in favour of the assessee and against the revenue. The appeal is allowed. No costs.