(2001) 12 MAD CK 0041

In the Madras High Court

Case No : T.C. No''s. 409 and 410 of 1986

Guindy Machine Tools P. Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 06-12-2001

Acts Referred:
Income Tax Act, 1961 — Section 139(8), 32(1), 37, 37(1), 80V

Citation : (2002) 176 CTR 56 : (2002) 254 ITR 780

Hon'ble Judges : R. Jayasimha Babu, J;A.K. Rajan, J

Bench : Division Bench

Advocate : V.S. Jayakumar, for the Appellant; Chitra Venkatraman, for the Respondent

Judgement

R. Jayasimha Babu, J.—Two questions have been referred to us one at the instance of the assessee and one at the instance of the Revenue.

The assessment year is 1986-87.

2. The question referred to us at the instance of the assessee who is a manufacturer of machine tools is,

Whether, on the facts and in the circumstances of the case, the interest paid u/s 139(8) of the Income Tax Act, 1961, is to be allowed as a

deduction u/s 80V and Section 37(1) of the Income Tax Act, 1961 ?

3. This question is required to be answered against the assessee in the light of the decision of the Supreme-Court in the case of Bharat Commerce

and Industries Ltd. Vs. The Commissioner of Income Tax, Central II, , wherein it was held that interest levied u/s 139 of the Income Tax Act for

delay in filing the return and interest levied u/s 215 of the Act for failure to pay the advance tax up to the statutory percentage, are not allowable

deductions as ""business expenditure"" u/s 37 of the Act. The question referred at the instance the assessee is, therefore, answered against the

assesses and in favour of the Revenue.

4. The question that is referred at the instance of the Revenue is,

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee was entitled to the

deduction of a sum of Rs. 60,226 u/s 32(1)(iii) in respect of payment made to Finmotil SA Zurich towards technical know-how ?

5. The assessee had claimed a deduction of Rs. 60,226 being the cost at which the assessee had acquired drawings, material, specification,

process sheets, assembly data, technical information and other instructions to enable the assessee to manufacture hand operated self-centering

chucks of different sizes, in May, 1963, from a company in Switzerland. That amount had not been claimed as a revenue expenditure by the

assessee in the year of acquisition or in subsequent years. The assessee had also not claimed any depreciation thereon. It had all along treated the

same as a capital asset. In the previous year relevant to this assessment year, the assessee discarded those drawings, etc., on the ground that they

had become obsolete and wrote off that amount in its books. The assessee had by then commenced manufacture of more sophisticated power

operated chucks such as pneumatic chucks and hydraulic chucks. The assessee claimed the amount so written off as depreciation by relying on

Section 32(1)(iii) as it stood during that assessment year. That claim was disallowed by the Assessing Officer as also by the appellate authority but

was allowed by the Appellate Tribunal.

6. Section 32(1)(iii) of the Income Tax Act as it stood in that assessment year read thus :

32. (1)(iii) in the case of any building, machinery, plant or furniture which is sold, discarded, demolished or destroyed in the previous year (other

than the previous year in which it is first brought into use), the amount by which the moneys payable in respect of such building, machinery, plant or

furniture, together with the amount of scrap value, if any, fall short of the written down value thereof:

7. That provision is applicable to building, machinery, plant or furniture which is sold, discarded, demolished or destroyed in a previous year in

which it is brought into use. That section is applicable to ""plant"". ""Plant"" is defined in Section 43(3) of the Act, thus :

''Plant includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purposes of the business or profession but does

not include tea bushes or livestock.

8. The Supreme Court in the case of Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, , held that

drawings, designs, charts, plans, processing data and other literature fall within that definition of ""plant"". The drawings and other documents which

the assessee had obtained from the Swiss manufacturer for manufacturing hand operated chucks clearly constituted ""plant"" to which Section 32(1)

(iii) was applicable.

9. The assessee did not sell those drawings and other documents but discarded the same. The question of ascertaining the money payable for those

items, therefore, does not arise. The extent of depreciation that can be claimed u/s 32(1)(iii) is the amount for which the monies payable for the

building, machinery, plant or furniture together with the amount of scrap value if any fall short of the written down value. When no amount is

payable for what has been discarded, the question of deducting the same from the written down value does not arise. When the drawings and

other documents are discarded or destroyed and the contents thereof are not capable of being put to use by any other person, there is no scrap

value either. The written down value also becomes the amount which can be claimed as the amount of depreciation. The written down value is

defined u/s 43(6) of the Act which reads thus,

(6) ''written down value'' means--

(a) in the case of assets acquired in the previous year, the actual cost to the assessee ;

(b) in the case of assets acquired before the previous year, the actual cost to the assessee less all depreciation actually allowed to him under this

Act, or under the Indian Income Tax Act, 1922 (11 of 1922), or any Act repealed by that Act, or under any executive orders issued when the

Indian Income Tax Act, 1886 (2 of 1886), was in force :

Provided that in determining the written down value in respect of buildings, machinery or plant for the purposes of Clause (ii) of Sub-section (1) of

Section 32, ''depreciation actually allowed'' shall not include depreciation allowed under Sub-clauses (a), (b) and (c) of Clause (vi) of Sub-section

(2) of Section 10 of the Indian Income Tax Act, 1922 (11 of 1922), where such depreciation was not deductible in determining the written down

value for the purposes of the said Clause (vi).

10. The Explanations thereunder not being relevant for the present purpose, the same need not be set out and are not set out.

11. The definition of ""written down value"" in the case of assets acquired before the previous year therefore, is ""the actual cost of the asset less all

depreciation actually allowed to him under the Act or any other Act"". In this case the assessee had not claimed any depreciation for this asset, and,

therefore, no occasion for allowing the same had arisen and no depreciation had been ""actually allowed"". The Supreme Court in the case of

Commissioner of Income Tax Vs. Mahendra Mills, , as set out in the headnote therein, held that,

''Actually allowed'' does not mean ''notionally allowed'' and that if the assessee has not claimed deduction of depreciation in the past year it

cannot be said that it was notionally allowed to him.

12. Having regard to that position of law, the written down value of the assets in respect of which the assessee claims depreciation here is the cost

of acquisition, as no depreciation had been claimed or actually allowed and, therefore, the deduction of any amount allowed as depreciation from

the cost of acquisition was not possible. The cost of acquisition itself became, in this case, the written down value. Though the words used are

written down value"" implying that the value written is something that is brought down from a higher figure, that expression is normally apposite only

where the asset had depreciated and the value written down is less than the cost of acquisition. Having regard to the manner in which the term

written down value has been used in Section 32(1)(iii) of the Act and having regard to the definition thereof u/s 43(6), there is no reason why the

cost of acquisition itself cannot be regarded as the written down value in a case like this.

13. Learned counsel for the Revenue submitted that the law has been subsequently amended and that, though that amendment ''is yet to be brought

into force, the amendment having been enacted in 2001, to come into effect from 2002, we should take note of it and give effect to it. We do not

find it possible to accede to such an argument. A law which has to take effect from a future date cannot be regarded as having already come into

effect even when it has not. It does not even purport to be retrospective in operation. The amendment assumes existence of doubts, and purports

to remove the same by including a declaration as an Explanation in a newly added Explanation 5 into Section 32(1) to the effect that the provisions

of the sub-section shall apply whether or not the assessee has claimed the deduction in respect of depreciation in computing his total income. We

fail to see what doubt there can be about the legal position after the Supreme Court had laid down the law, the law having been laid down in the

case of Commissioner of Income Tax Vs. Mahendra Mills, already referred to. The Supreme Court therein categorically held that the words,

actually allowed"" with reference to depreciation does not mean ""notionally allowed"" and that depreciation cannot be granted even when it is not

claimed. As observed by the court, a privilege, namely, a privilege of claiming depreciation cannot be turned into a disadvantage even when the

assessee does not claim depreciation and an option given to the assessee cannot be made into an obligation.

14. The amendment relied upon by the Revenue as and when it takes effect can be considered only after it has taken effect and though prima facie

we are not persuaded to hold that there is any doubt with regard to the legal position, the interpretation of that provision can be considered only

after that provision comes into force.

15. Learned counsel also referred us to the decision of this court in the case of Commissioner of Income Tax Vs. Southern Petro Chemical

Industries Corporation Ltd. (No. 2), wherein it was held, inter alia, that it was not open to an assesses to withdraw the particulars regarding the

grant of depreciation by filing a revised return and that depreciation being a statutory allowance it is open to the Income Tax Officer to grant

depreciation even if it is not claimed. Though that judgment was not referred to in the case of Commissioner of Income Tax Vs. Mahendra Mills, ,

having regard to the law laid down by the Supreme Court in the case of Commissioner of Income Tax Vs. Mahendra Mills, , we are bound by the

law so laid down. Counsel submits that the decision of this court in the case of

Commissioner of Income Tax Vs. Southern Petro Chemical

Industries Corporation Ltd. (No. 2), is under appeal before the Supreme Court. That docs not make any difference so far as the law laid down by

the apex court in the case of Commissioner of Income Tax Vs. Mahendra Mills, being the law which is binding on all the courts in India under

article 141 of the Constitution.

16. The question referred to us at the instance of the Revenue is, therefore, answered against the Revenue and in favour of the assessee.

