
(2014) 02 CAL CK 0074
In the Calcutta High Court
Case No : IT Appeal No. 183 of 2003

ITC Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-02-2014

Acts Referred:

Income Tax Act, 1961 — Section 13, 145, 145(1), 4, 43B

Citation : (2014) 267 CTR 405 : (2014) 365 ITR 532

Hon'ble Judges : Tapash Mookherjee, J;G.C. Gupta, J

Bench : Division Bench

Advocate : J.P. Khaitan and Ms. Nilanjana Banerjee, Advocate for the Appellant;
Nizamuddin, Advocate for the Respondent

Judgement

1. The subject-matter of challenge in this appeal is a judgment and order dt. 28th Feb., 2003 by which the appeal preferred by the Revenue was allowed by the Tribunal holding that:

Admittedly, the impugned amount of excise duty of Rs. 85.71 lakhs was actually not provided in the books of accounts not claimed by the assessee as a deduction while computing the business profits for the earlier assessment years, as per the provisions of the law existing for the said earlier assessment years, cannot be a ground for allowing as a deduction out of the profit of the relevant asst. yr. 1984-85 by taking shelter of s. 43B. As per opinion, s. 43B puts a further rider for allowing any deduction and cannot be taken as a gateway for allowing deductions in respect of the expenditure for which the liability arose in the earlier years but the same was not provided in the books of accounts or claimed in the computation of income in those earlier years in which s. 43B was not in existence. Earlier provisions of s. 4 of the I.T. Act, 1961, income tax shall be charged for any assessment year, in respect of the total income of the previous year. For arriving at the total income of the previous year, only the expenditure pertaining to that previous year to be deducted. It is not open to assessee to deduct the expenses of earlier years or subsequent years for arriving at total

income of that previous year.

Aggrieved by the said order of the Tribunal, the assessee has come up in appeal.

2. Mr. Khaitan, learned senior advocate, appearing for the assessee appellant submitted that it would appear even from the order of the AO that he referred to the adjudicatory orders in respect of the show-cause cum demand notices dt. 10th Oct., 1977, 29th Sept., 1980 and 5th Nov., 1980 passed on 12th Feb., 1982. He submitted that the aforesaid three several demands were disputed by the assessee and the matter was set at rest by the order of adjudication passed on 12th Feb., 1982. The assessee had an option to prefer an appeal within three months. The assessee, however, was advised not to contest the matter any further. The money as such was paid before the time to prefer an appeal had expired. It is, in those circumstances, that the claim for deduction was made during the asst. yr. 1984-85. Mr. Khaitan submitted that when the payment was made, s. 43B had already been introduced to the statute whereunder deduction can only be made after the payment had, in fact, been made. He contended that even without the aid of s. 43B the position would not have been much different. He drew our attention to a Division Bench judgment of this Court in the case of Commissioner of Income Tax Vs. Orient Supply Syndicate, wherein the Division Bench opined as follows:

In that view of the matter, we are of the opinion that the Tribunal was correct in allowing this deduction. We would, however, say that it is not in all cases correct to say that a statutory liability discharged in a particular year become eligible for deduction in the year in question in the mercantile system of accounting. It depends on the facts and circumstances of the case and on the statutory provisions. Here in part the statutory liability admittedly accrued in the year in question and in part became real and enforceable in view of the facts in the year in question though referable to earlier years. But the reality of the situation was that, in substance, the liability accrued in the year in question. In that view of the matter, the decision of the Tribunal is sustained.

3. He, therefore, submitted that the Tribunal fell into an error of law in disallowing the deduction claimed by the assessee.

4. Mr. Nizamuddin, learned advocate appearing for the Revenue submitted that the Division Bench judgment cited by Mr. Khaitan does not really help the assessee appellant because their Lordships in that judgment expressed (at p. 15) their agreement with the view of the Madras High Court and the Kerala High Court. He referred to the judgment in the case of L.J. Patel and Company Vs. Commissioner of Income Tax, wherein Kerala High Court has opined as follows:

Apart from any reference to any decision, by merely reading s. 13 of the Indian I.T. Act, 1922, and s. 145 of the I.T. Act, 1961, one would have thought that the income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" should be computed in accordance with the method of accounting regularly employed by the assessee. These are the words

of s. 145(1) of the I.T. Act, 1961, and s. 13 of the Indian I.T. Act, 1922, is in similar terms. It has not been suggested at any time that the method of accounting regularly employed by the assessee is not the mercantile system of accounting. If it is the mercantile system of accounting which is to be followed, the liability to pay Rs. 31,675 should have been claimed as a liability for the asst. yr. 1953-54. The liability of a past year cannot be taken into account for computing the income of a subsequent year. Nor can the income of a year other than the relevant year, whether that income accrued before or after the relevant year, be taken into account for computing the income for the relevant year. This is the principle of the decision of the Madras High Court in *Pope The King Match Factory Vs. Commissioner of Income Tax, Madras*, . This decision has been specifically approved by the Supreme Court in the decision in *Kedarnath Jute Mfg. Co. Ltd. vs. CIT* (1971) 82 ITR 363, 367 (SC).

5. He submitted that the aforesaid views expressed in the case of *L.J. Patel & Co.* (supra) have been affirmed by a Full Bench judgment of Kerala High Court in *CIT vs. K.A. Karim & Sons & Ors.* (1981) 24 CTR (Ker)(FB) 83 : (1982) 133 ITR 515 (Ker)(FB).

6. We have considered the rival submissions advanced by the learned advocates appearing for the parties. It would appear that the judgment in the case of *L.J. Patel & Co.* (supra) is distinguishable on facts. In that case, excise duty was enhanced by the Finance Act, 1951. Following such enhancement, the assessee was required to pay a sum of Rs. 31,675 as additional excise duty which the assessee did not pay. The assessee challenged the same on various grounds, but did not ultimately succeed. Whereas in the case before us, it was not disputed, that the claim was made on the basis of a valuation which was disputed by the assessee. Therefore, it was a factual dispute which needed adjudication. Once the claim was adjudicated, the assessee had the option to prefer an appeal, but before the time to prefer an appeal ran out, the assessee chose to put an end to the controversy and paid the amount adjudicated and correspondingly claimed deduction. Therefore, it could not be said that the facts and circumstances of the case before us and the facts and circumstances in the case of *L.J. Patel & Co.* (supra) were same or identical.

7. In the case of *CIT vs. Orient Supply Syndicate* (supra), the Division Bench took the view that the question whether the liability of the earlier years discharged subsequently can be allowed to be deducted is a question which would depend on the facts and circumstances of the case and the statutory provisions. Our attention was not drawn to any statutory provisions on the basis of which the appellant before us incurred the liability to pay the excise duty in question or in violation whereof the appellant refused to pay. On the contrary, it appears that the claim was made on the basis of a valuation which the assessee disputed and that is how the matter went to the adjudicatory authority. It is in those circumstances that the payment was made after adjudication and not during the relevant year. We are of the opinion that even before introduction of s.

43B, it could not have been said that in all cases the assessee, maintaining books of accounts in a mercantile system, could not be permitted to deduct the amount paid in respect of liability which was incurred in the earlier years. We are, in any event, bound by the judgment in the case of CIT vs. Orient Supply Syndicate (*supra*) and are not in a position to take a different view. For the aforesaid reasons the appeal is allowed in favour of the assessee. The order under challenge is set aside. The order of the CIT(A) is restored.