
(1999) 04 PAT CK 0053
In the Patna High Court
Case No : Tax Case No. 3 of 1998

Usha Beltron Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 23-04-1999

Acts Referred:

Income Tax Act, 1961 — Section 32A, 33, 43A, 43A(2)

Citation : (2000) 158 CTR 595 : (1999) 238 ITR 133 : (1999) 3 PLJR 140 :
(2000) 111 TAXMAN 201

Hon'ble Judges : Sachchidanand Jha, J;Aftab Alam, J

Bench : Division Bench

Advocate : K.N. Jain, Binod Poddar, Biren Poddar and Anubha Raut Choudhary,
for the Appellant; K.K. Vidyarthi and K.K. Jhunjhunwala, for the Respondent

Judgement

S.N. Jha, J.—At the instance of the assessee, the Tribunal has referred the following questions to this court for opinion u/s 256(2) of the Income Tax Act, 1961 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not allowing investment allowance u/s 32A of the Income Tax Act, 1961, on the sum of Rs. 25,00,495 representing the increase in the actual cost (on account) of changes in the rates of exchange u/s 43A of the Act ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in applying the ratio of the decision of the Supreme Court in the case of Commissioner of Income Tax, Gujarat Vs. Arvind Mills Ltd., , rendered in connection with the allowance of development rebate to the company's claim for allowing investment allowance ?"

2. The assessee-company is engaged in the business of manufacturing telephone cables. It acquired plant and machinery from outside India in connection with its business. The plant and machinery were installed and put to use from October 1, 1988, when the company commenced its commercial production. For the

assessment year 1989-90 corresponding to the accounting year 1988-89 ending on March 31, 1989, the assessee increased the cost of plant and machinery by Rs. 25,00,493 in view of the provisions of Section 43A of the Income Tax Act on account of fluctuation in exchange rate, and claimed depreciation as well as investment allowance on the increased cost. The Assessing Officer did not grant either depreciation or investment allowance on the increased cost on the ground that there was no actual remittance to the foreign supplier during the period. The assessee went up before the Commissioner of Income Tax (Appeals) in appeal who upheld the order of the Assessing Officer. The assessee moved the Income Tax Appellate Tribunal in second appeal. The Tribunal relying on a decision of the Supreme Court in Commissioner of Income Tax, Gujarat Vs. Arvind Mills Ltd., , allowed the assessee's claim as regards depreciation on the increased cost of the plant and machinery. However, again relying on the same decision of the Supreme Court and, further in view of the provisions of subsection (2) of Section 43A, it rejected the claim as regards investment allowance. Later, pursuant to the order of this court u/s 256(2) of the Income Tax Act, 1961, it referred the aforementioned questions for its opinion,

3. It would thus appear that though the Tribunal apparently accepted the assessee's contention that as a result of variation in exchange rates its liability on account of purchase of plant and machinery from outside India had increased and, therefore, in view of the provisions of Section 43A of the Income Tax Act, the amount by which the liability had increased should be added to the actual cost of the plant and machinery, the benefit of such addition was confined to depreciation allowance alone. As regards the investment allowance, the Tribunal held that in view of Sub-section (2) of Section 43A of the Income Tax Act, the assessee is not entitled to the same.

4. Mr. K. N. Jain, learned counsel appearing for the assessee-company, submitted that the Tribunal has committed an apparent error of law in relying on Sub-section (2) of Section 43A of the Act for excluding investment allowance from the ambit of Sub-section (1). He submitted that the finding is contrary to the express provisions of Sub-section (2) which, in terms refers to only development rebate, and is based on a misreading of the decision in Commissioner of Income Tax, Gujarat Vs. Arvind Mills Ltd., , in which the Supreme Court has rather held that all allowances including development rebate and depreciation allowance or other types of deduction will have to be based on adjusted actual cost after taking into account the increased liability on account of fluctuation in exchange rates, but it is only on account of caveat contained in Sub-section (2) that development rebate is excluded.

5. Mr. K. K. Vidyarthi, learned counsel for the Revenue, while reiterating the stand that as there was no actual remittance of money during the period in question and, therefore, the provisions of Section 43A of the Act are not applicable, further submitted that investment allowance is the same thing as the development rebate. He referred to the legislative history of the provisions in

support of his contention that investment allowance u/s 32A and development rebate u/s 33 of the Act are one and the same thing. That being so, according to him, the provisions of Sub-section (2) of Section 43A should be held to be applicable to the investment allowance as well. The investment allowance would, thus, stand out of the purview of Section 43A(1) of the Act.

6. At this stage, Section 43A of the Act may be quoted as hereunder :

"45A. (1) Notwithstanding anything contained in any other provision of this Act, where an assessee has acquired any asset from a country outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange at any time after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency for making payment towards the whole or a part of the cost of the asset or for repayment of the whole or a part of the moneys borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset (being in either case the liability existing immediately before the date on which the change in the rate of exchange takes effect), the amount by which the liability aforesaid is so increased or reduced during the previous year shall be added to, or, as the case may be, deducted from, the actual cost of the asset as defined in Clause (1) of Section 43 or the amount of expenditure of a capital nature referred to in Clause (iv) of Sub-section (1) of Section 35 or in Section 35A or in Clause (ix) of Sub-section (1) of Section 36, or, in the case of a capital asset (not being a capital asset referred to in Section 50), the cost of acquisition thereof for the purposes of Section 48, and the amount arrived at after such addition or deduction shall be taken to be the actual cost of the asset or the amount of expenditure of a capital nature or, as the case may be, the cost of acquisition of the capital asset as aforesaid . . .

(2) The provisions of Sub-section (1) shall not be taken into account in computing the actual cost of an asset for the purpose of the deduction on account of development rebate u/s 33."

7. In Commissioner of Income Tax, Gujarat Vs. Arvind Mills Ltd., the Supreme Court noted that the devaluation of the Indian rupee on June 6, 1966, had brought about several problems. One such problem arose out of the consequential enhancement in the liability of an Indian businessman who had imported plant and machinery from abroad, the consideration for which had been fixed in terms of a foreign currency and which had not been fully discharged by the date of devaluation. It was in order to obviate the difficulties that Section 43A was inserted in the Income Tax Act by Act 20 of 1967 with effect from April 1, 1967.

8. The dispute in that case related to depreciation allowance and development rebate. Dealing with the issues the court observed (page 262) :

"So far as depreciation allowance is concerned, the position is perhaps, a little simpler because it is a recurrent claim. Under the definitions contained in Section

32 read with Section 43(1) and (6) of the Income Tax Act, the depreciation is to be allowed on the actual cost of the asset less all depreciation actually allowed in respect thereof in earlier years. Thus, where the cost of the asset subsequently goes up because of devaluation, whatever might have been the position in the earlier year, it is always open to the assessee to insist, and for the Income Tax Officer to agree, that the written down value in the year in which the increased liability has arisen should be taken on the basis of the increased cost minus depreciation earlier allowed on the basis of the old cost ... So far as development rebate is concerned, however, a difficulty will arise because it is a one-time allowance which has to be allowed in the year in which the machinery or plant has been acquired, installed or brought to use. If the actual cost has already been determined at the original price and development rebate has been granted on that footing to the assessee and an increase in liability arises later, it is possible for the Department to contend that since the actual cost has already been determined and development rebate fixed on that footing there is no possibility or necessity for reconsidering the issue though it may perhaps contend to the contrary if the fluctuation in exchange rate had resulted in a decrease in liability. On the other hand, the assessee may contend that, since the figure of actual cost has undergone a modification as a result of the currency revaluation, the assessment for the year in which development rebate was allowed should be reopened and the actual cost as well as the development rebate should be recomputed ; or, if this is not possible, that the actual cost should be reworked at least in the subsequent year and any deficiency in the development rebate earlier allowed should be made up in the subsequent year though a corresponding alternative argument would not have been available if the fluctuation in currency had been favourable to our country. To obviate all these doubts and difficulties, Section 43A was enacted. While, Sub-section (1) of Section 43A provides generally for modification of the actual cost of the asset consequent on the variation in exchange rate in the year in which the increase or reduction in liability arises, Sub-section (2) contains a clear mandate that the provisions of Sub-section (1) are not to be taken into account in computing the actual cost of an asset for the purpose of deduction on account of the development rebate u/s 33."

9. Summing up, the court stated (page 271) :

"As we have discussed above, the provisions of Sub-section (1) apply to the present case and the increased liability should be taken as "actual cost" within the meaning of Section 43A(1). All allowances including development rebate or depreciation allowance or the other types of deductions referred to in the sub-section would therefore have to be based on such adjusted actual cost. But then Sub-section (2) intercedes to put in a caveat. It says that the provisions of Sub-section (1) should not be applied for purposes of development rebate. The effect is that the adjusted actual cost is to be taken as the actual cost for all purposes other than for grant of development rebate."

10. It would thus appear, that although the general principles of Section 43A(1) were to apply to all allowances and deductions including even development rebate and they are to be based on the adjusted actual cost, it was only because of the mandate of Sub-section (2) that such adjusted actual cost was not to be taken into account for the purposes of development rebate. The moot question, therefore, is as to whether development rebate in Section 43A(2) includes investment allowance as well. As mentioned above, this was the sheet anchor of the argument of Mr. K. K. Vid-yarthi on behalf of the Revenue.

11. Although investment allowance in Section 32A and development rebate in Section 33 of the Income Tax Act refer to deductions in respect of plant and machinery amongst other things, the provisions are not identical. The provision regarding development rebate was introduced as early as in 1955 in the Indian Income Tax Act, 1922. After the provision was incorporated in the 1961 Act, it underwent amendments in 1963 and 1965 by Acts 43 of 1963 and 15 of 1965. The provision in its present form was substituted in 1967 by Act 20 of 1967. It was by that Act that Section 43A was also added in the Income Tax Act. The provision regarding investment allowance was introduced for the first time in 1976 by Act 66 of 1976. As both the provisions have held the field together, it is difficult to accept the contention of Mr. Vidyarthi that they are one and the same thing. It was rightly submitted by Mr. Jain that while introducing the provision regarding investment allowance by adding Section 32A in the Act the Legislature was supposed to be aware of the provision regarding development rebate in Section 33. This becomes more evident from the fact that the provision regarding development rebate finds specific mention in Clause (c) of the second proviso to Sub-section (1) of Section 32A of the Act.

12. It is to be kept in mind that the same Act, i.e., Act 20 of 1967, inserted Section 43A and also amended the substantive provisions regarding development rebate by substituting an altogether new section. The Legislature in its wisdom apparently thought it appropriate to exclude development rebate from the purview of Section 43A. It is well settled that where the provisions of enactment are clear and do not admit of any doubt or ambiguity, it is not for the court to speculate on the reasons of the enactment. None the less, while considering the submission to that effect the Supreme Court in *Commissioner of Income Tax, Gujarat Vs. Arvind Mills Ltd.*, , observed that it may be that the Legislature intended to give a different treatment to development rebate from depreciation and other allowances because the allowance of development rebate can result in an assessee claiming allowances exceeding the original cost. The Legislature perhaps thought that though development rebate was intended to promote development of industries, this could not be allowed at the cost of the foreign exchange resources of the country which are also depleted when there is an increase in the liability due to devaluation of the currency. I find sufficient force in the contention of Mr. Jain that if the Legislature intended to exclude investment allowance from the application of Section 43A, it could have mentioned the same in the body of Sub-section (2).

13. Section 43A provides for adjustment of the increased liability occurring in the previous year. Where the year in which the liability arises is the same as that in which the asset is acquired, installed or put to use, there is no difficulty in determining the actual cost within the meaning of Section 43 of the Act. Section 43A is designed to meet a different situation where the assessee has acquired an asset on deferred payment basis and in the meantime the liability increases (or decreases) on account of fluctuation in the foreign exchange value of rupee. This Section enables the assessee to claim the amount by which the liability is so increased or reduced during the previous year, to be added to, or, as the case may be, deducted from the actual cost of the assessee.

14. In the present case, it appears to be an admitted position that the machinery was installed and put to use from October 1, 1988. It also appears to be an admitted fact that as a result of fluctuation in the exchange rate the liability of the assessee-company had increased. The argument that actual remittance was not made during the accounting year is neither borne out from Section 43A nor does it appear from the Tribunal's order. As a matter of fact, the Tribunal apparently rejected the contention of the Department to that effect as otherwise, on the ground that no remittance was made, it should have disallowed depreciation allowance as well, provided of course, that this was the requirement of law. The fact that the Tribunal allowed depreciation allowance is indicative of the fact that the Department's contention in this regard was not accepted. In the above premises, the decision of the Tribunal disallowing investment allowance was not correct in law.

15. Before I conclude I must mention that the claim regarding investment allowance on the increased liability in terms of Section 43A has been allowed by the Tribunal in the case of the assessee-company itself for the subsequent assessment years, namely, 1990-91 and 1991-92, vide ITA Nos. 896 and 897/ Patna of 1994 decided on March 19, 1998.

16. In the above premises, the questions referred for the opinion of this court are answered in the negative, i.e., in favour of the assessee and against the Revenue.

17. Let a copy of this judgment be sent to the Income Tax Appellate Tribunal, Patna Bench, Patna.

Aftab Alam, J.

I agree.