(1998) 06 GUJ CK 0006

In the Gujarat High Court

Case No : IT Ref. No''s. 72 and 73 of 1984

Vikram Mills Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 24-06-1998

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

Citation : (1999) 151 CTR 701 : (2000) 242 ITR 290 : (1999) 107 TAXMAN 344

Hon'ble Judges : M.C. Patel, J;C.K.Thakker, J

Bench : Division Bench

Advocate : Manish J. Shah, for J.P. Shah, for the Appellant; P.G. Desai and Manish R. Bhatt, for the Respondent

Judgement

C.K. Thakkar, J.—In IT Ref. No. 72 of 1984 the following two questions have been framed for the opinion of this Court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the betterment charges were not deductible in computation of total income?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that expenditure by way of bank guarantee commission is expenditure of capital nature and not deductible in computation of total income?"

In IT Ref. No. 73 of 1984 the following three questions have been framed for the opinion of this Court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the betterment charges were not deductible in computation of total income?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that expenditure by way of bank guarantee commission is expenditure of capital nature and not deductible in computation of total income?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that stamp charges paid in respect of agreement for the deferred payment basis was expenditure of capital nature?"

2. So far as question No. 3 in IT Ref. No. 73 of 1984 is concerned, Mr. Shah, learned Advocate for the assessee, made a statement that in view of depreciation allowed to assessee in subsequent years, he does not press that question. That question, therefore, does not survive and no opinion is expressed.

3. So far as question No. 1 in both references is concerned, it is covered by a decision of this Court in Addl. Commissioner of Income Tax, Gujarat Vs. Rohit Mills Ltd., approved by the Hon''ble Supreme Court in Arvind Mills Ltd. Vs. Commissioner of Income Tax, Gujarat, . The question was decided in favour of Revenue and against the assessee. Accordingly, the question is decided in the affirmative i.e., against the assessee and in favour of the Revenue.

4. On question No. 2 in both the references, the authorities relied upon a decision of this Court in Commissioner of Income Tax, Gujarat Vs. Vallabh Glass Works Ltd., and held that expenditure by way of bank guarantee commission for purchase of machineries on deferred payment basis is expenditure of a capital nature and is not deductible in computation of total income of the assessee. In Vallabh Glass Works Ltd. (supra), decisions in Addl. Commissioner of Income Tax Vs. Akkamba Textiles Ltd., and Sivakami Mills Ltd. Vs. Commissioner of Income Tax, were cited. The assessee relying upon above two decisions, contended that the view taken in the above two decisions was that expenditure by way of bank guarantee commission could not be said to be a part of expenditure of a capital nature but revenue expenditure and it was, therefore, deductible in computation of total income. The Division Bench observed that in those cases such a view was taken. It however, dissented from the said view and ultimately held that such an expenditure can be said to be expenditure of capital nature and the authorities were right in not granting deduction from total income. Accordingly, the question was decided against the assessee and in favour of Revenue. A similar view was also taken by this Court in a subsequent case in Commissioner of Income Tax Vs. Bharat Suryodaya Mills Co. Ltd., . Following Vallabh Glass Works Ltd., (supra) this Court held that bank guarantee commission for purchasing machinery was expenditure of a capital nature and, therefore, was not deductible from total income of the assessee.

5. Mr. Shah drew our attention to two decisions of the Hon''ble Supreme Court in Additional Commissioner of Income Tax Vs. Akkamamba Textiles Ltd., and Commissioner of Income Tax Vs. Siwakami Mills Ltd., . In Sivakami Mills Ltd., the Supreme Court referred to Sivakami Mills Ltd. Vs. Commissioner of Income Tax, as also Addl. Commissioner of Income Tax Vs. Akkamba Textiles Ltd., . The Hon''ble Supreme Court observed as under :

"The short question that arises for our consideration in this appeal is whether the guarantee commission paid by the assessee is a revenue expenditure and hence allowable as deduction in computing the total income in the asst. yr. 1968-69. The High Court answered the question in favour of the assessee (see Sivakami Mills Ltd. Vs. Commissioner of Income Tax, . It was held that the guarantee commission paid by the assessee was a revenue expenditure and hence allowable as a deduction in computing the total income. The Revenue has come in appeal.

A similar question arose before the Andhra Pradesh High Court in Addl. Commissioner of Income Tax Vs. Akkamba Textiles Ltd., . The Court held that the expenditure incurred is revenue in nature and so allowable as deduction. Civil Appeal No. 2832 of 1977 preferred against the said decision was dismissed by this Court [see Additional Commissioner of Income Tax Vs. Akkamamba Textiles Ltd., . In view of the aforesaid decision we see no force in this appeal. Accordingly, this appeal is dismissed."

6. In Vallabh Glass Works Ltd., (supra) this Court dissented from the view taken by the Andhra Pradesh and Madras High Courts, but the Hon''ble Supreme Court in the above two cases dismissed the appeals filed by the Revenue on the basis of the above two decisions, virtually affirming the view taken by them.

7. In these circumstances, in our opinion, the decision in Vallabh Glass Works Ltd., stands impliedly overruled to that extent. The second question in both references, therefore, must be answered in the negative i.e., in favour of assessee and against the Revenue.

References are disposed of accordingly. No order as to costs.

