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Court : Guwahati

Decided On : Aug-20-1996

Judge : D.N. Baruah and S.B. Roy, JJ.

Acts : Income Tax (Appellate Tribunal) Rules, 1963 - Rule 11

Appeal No. : Income-tax Reference No. 4 of 1993

Appellant : Amines Plasticizers Ltd.

Respondent : Commissioner of Income-tax

Advocate for Def. : G.K. Joshi and U. Bhuyan, Advs.

Advocate for Pet/Ap. : A.K. Saraf and K.K. Gupta, Advs.

Judgement :

D. N. Baruah, J.

1. At the instance of the assessee, the following two questions have been referred under Section 256(1) of the Income-tax Act, 1961 (for short, 'the Act'), for opinion of this court :

' 1. Whether, on the facts and circumstances of the case, the Tribunal was justified in law in not considering and deciding the question raised in the additional ground before the Tribunal as regards allowing of Rs. 16,18,019 being the amount of

interest due and payable by the assessee on loans for acquisition of fixed assets as revenue expenditure in the assessment year 1985-86

2. Whether, on the facts and circumstances of the case, the Tribunal was justified in law in refusing to consider and decide the additional ground of appeal on the ground that the said additional ground was not raised before the Tribunal in accordance with the prescribed rules and method ought to be followed in such matters ?'

2. For the purpose of answering these two questions the facts of the case may, briefly, be stated as under :

The assessee is a public limited company with its registered office at Guwahati, Assam, and head office at Bombay. The Assessing Officer disallowed certain claims made by the assessee. Situated thus, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals). The Commissioner of Income-tax (Appeals) also affirmed the order passed by the Assessing Officer and, therefore, the assessee preferred yet another appeal before the Income-tax Appellate Tribunal, Guwahati. However, the Tribunal affirmed the orders passed by the authorities below. According to the assessee, the additional ground urged by the assessee before the Tribunal at the time of hearing was not considered by the Tribunal. However, this ground was not taken in the memorandum of appeal. Situated thus, the assessee filed an application under Section 256(1) of the Act. The Tribunal heard the matter and by order dated July 29, 1991, dismissed the application refusing to consider the additional ground. While dismissing the application, the Tribunal observed thus :

'After we have perused the records, it is seen that there are prescribed rules and method of filing application for admission of additional ground before the Appellate Tribunal. After the Appellate Tribunal gives permission for filing of additional ground then the question of entertaining and disposing of such additional ground would arise and that too after giving both the sides opportunity of being heard. In the present case, we could not find any application for admission of the additional ground which is found somewhere amidst the other papers filed in the present case. Thus, it is seen that there was no application for admission of additional

ground and the same has been rightly not considered by the Appellate Tribunal at that stage. In such a situation, it

cannot be said that there was an apparent mistake in the order of the Appellate Tribunal which requires amendment to the order passed earlier.'

3. In such circumstances, the assessee requested the Tribunal to refer the above two questions. Hence, the present reference.

4. We have heard Dr. A. K. Saraf, learned counsel appearing on behalf of the assessee, and Mr. G. K. Joshi, learned counsel appearing on behalf of the Revenue.

5. Normally, as per rule the grounds are to be stated in the memorandum of appeal before the Tribunal. But the parties are not prohibited from taking additional ground at the time of hearing. In this connection, reference may be made to rule 11 of the Income-tax (Appellate Tribunal) Rules, 1965 (for short, 'the Rules'). Under the said rule, the appellant shall not, except by leave of the Tribunal, urge or be beard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds set forth in the memorandum of appeal or taken by leave of the Tribunal under this rule. However, if the appellant desires to urge any additional ground, leave of the Tribunal has to be sought for. If such leave is granted, it will be incumbent on the part of the Tribunal to give full opportunity to the other side of being heard. In this case, the additional ground was urged by the assessee at the time of hearing of the appeal, but the Tribunal held that there was no application for admission of an additional ground and the same had been rightly not considered by the Appellate Tribunal at that stage and that it could not be said that there was an apparent mistake in the order requiring amendment to the order passed earlier. Rule 11 of the rules speaks only of leave and the leave may be sought for either in writing or by an oral prayer. As the Tribunal did not disbelieve that leave was sought for, in our opinion, the Tribunal ought to have appreciated the said additional ground.

6. In view of the above, we answer the questions in the negative, in favour of the assessee and against the Revenue. However, we make it clear that if an additional

ground is urged, it will be the bounden duty of the Tribunal to give sufficient opportunity to the other side of being beard.

7. A copy of this judgment under the signature of the Registrar and the seal of the High Court shall be transmitted to the Income-tax Appellate Tribunal, Guwahati.

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