

Bhor Industries Ltd. Vs. Assistant Commissioner of Income Tax and ors.

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Court : Mumbai

Decided On : Mar-13-2003

Reported in : (2003)183CTR(Bom)292

Judge : S.H. Kapadia and ;J.P. Devadhar, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 237

Appeal No. : Writ Petn. No. 1917 of 2002

Appellant : Bhor Industries Ltd.

Respondent : Assistant Commissioner of Income Tax and ors.

Advocate for Def. : R.V. Desai, ;P.S. Jetly and ;S.V. Bharucha, Advs., i/b., ;K.B. Rao, Adv.

Advocate for Pet/Ap. : J.D. Mistry and ;B.D. Damodar, Advs., i/b., ;Kanga & Co.

Judgement :

S.H. Kapadia, J.

1. Being aggrieved by the inaction on the part of the Department in the matter of refund, the company has filed this writ petition against the Department for giving effect to the Tribunal's orders for the asst. yr. 1994-95 and asst. yr. 1996-97.

Facts in respect of asst. yr. 1994-95

2. Petitioner is a company under the Companies Act, 1956. During the assessment year in question, petitioner surrendered its tenancy rights to the landlord for which the petitioner received consideration. In view of the judgment of the Bombay High Court in *Cadell Weaving Mill Co. (P) Ltd. v. CIT* : [2001]249ITR265(Bom) the petitioner submitted that the consideration received from the landlord did not constitute, income under the head 'capital gains'.

3. When the matter reached hearing, learned advocates appearing on both sides submitted that the issue is squarely covered in favour of the assessee in the aforestated judgment.

4. In the circumstances, we do not see any reason why the order of the Tribunal dt. 17th Jan., 2002, in ITA No. 4456/Bom/2000 for the asst. yr. 1994-95 should not be given effect to by the Department. In fact, the decision of the Tribunal dt. 17th Jan., 2002, is confirmed by this Court vide order dt. 26th Feb., 2003, in IT Appeal No. 644 of 2002 following the above judgment'in the case of *Cadell Weaving Mm Co. (P) Ltd. (supra)*.

Facts in respect of the asst. yr. 1996-97

5. During the financial year ending 31st March, 1996, the petitioner had introduced voluntary retirement scheme at his Borivli Plant and it had incurred an expenditure of Rs. 10,02,23,735. The scheme was approved by the CIT under Section 10(10C) of the Act. In its P&L; a/c for the year ending 31st March, 1996, the petitioner claimed deduction in respect of the entire amount of Rs. 10,02,23,735. This was rejected by the AO and by the CIT(A) who took the view that expenditure should be spread over the life of 60 months of VRS. However, by order dt. 21st Jan., 2002, the Tribunal allowed deduction for the entire amount of Rs. 10,02,23,735 during the assessment year in the question. Being aggrieved by decision of the Tribunal, the Department came in appeal before us.

6. By judgment and order dt. 26th Feb., 2003, in IT Appeal No. 643 of 2002, reported as *CIT v. Bhor Industries Ltd.*, this Court took the view that the entire amount of Rs. 10,02,23,735 was deductible during the assessment year in question. Accordingly, appeal filed by the Department came to be dismissed on

26th Feb., 2003.

ORDER

7. For the aforestated reasons, we make rule absolute in terms of prayer Clause (a) with no order as to costs.

8. At this stage, Mr. Desai, learned counsel appearing for the respondents, applies for stay of the judgment for 8 weeks. Application is granted.

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