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Court : Mumbai

Decided On : Feb-06-1998

Reported in : (1998)62TTJ(Mumbai)309

Appeal No. : IT Appeal No. 7225/Mum/1997 6th February 1998 A. Y. 1996-97

Appellant : Mtz Polyesters Ltd.

Respondent : Assistant Commissioner of Income Tax

Judgement :
ORDER

M. V. R. Prasad, A.M.

This appeal is directed against the order of the Commissioner (Appeals) dated 3-11-1997, for the assessment year 1996-97.

2. The main objection taken is that the Commissioner (Appeals) erred in confirming the action of the assessing officer in making the adjustment of Rs. 6,56,660 being interest and other income earned by the applicant during the construction period as 'prima facie adjustment' under section 143(1)(a) of the Income Tax Act.

3. The appellant- company was incorporated with the object of manufacturing polyester films and chips. It filed a return for the assessment year 1996-97 on 30-11-1996, declaring 'nil' income. During the year of account relevant for the present

assessment year, the company had not started production as it was in the process of being set up. It had raised, by public issue, equity share capital and debenture funds and deposited these funds in inter-corporate deposits whereby it earned interest amounting to Rs. 6,47,82,308. It also received miscellaneous income of Rs. 9,80,233 and dividend income of Rs. 133. These amounts were shown in Schedule VI of the balance sheet as a deduction from capital work-in-progress and pre-operative expenditure as follows :

Rs.

Rs.

Capital work-in-progress + pre-operative expenditure

74,54,49,987.42

Less : Interest received (gross) tax deducted at source

6,47,82,308.27

Rs. 94,20,450)-(For previous period-TDS Rs. 4,35,551)

Dividend income

133.00

Tax deducted at source Rs. 33)-(previous year NIL)

Miscellaneous income

9,80,223.00

6,57,62,664.27

4. As per a note attached to the return of income, the appellant- company claimed that the above amounts were not taxable relying on the decision of the Hon'ble Bombay High Court in the case of CIT v. Maharashtra Electrosmelt Corporation Ltd. : [1995]214ITR489(Bom)

5. The assessing officer processed the return under the provisions of section 143(1)(a) of the Income Tax Act and vide his order dated 26-8-1997 held that the above receipts aggregating to Rs. 6,57,67,660 were of the nature of income and also that these incomes could not be deducted from the capital work- in-progress as claimed and accordingly, following the ratio of the decision of the apex court in the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. v. CIT : [1997]227ITR172(SC) brought these receipts to tax and in the process levied additional tax of Rs. 60,50,165 under the provisions of section 143(1A).

6. Before the Commissioner (Appeals), the assessee claimed that the adjustments made by the assessing officer in the impugned order under section 143(1)(a) were not of the nature of prima facie inadmissibles and so, they deserved to be deleted. In support of its argument, the appellant reiterated the contention that the decision of the Hon'ble Bombay High Court in the case of Maharashtra Electrosmelt Corporation Ltd., (supra) squarely covered the issue in its favour.

It was also pleaded that this decision was based upon the guidelines given by the Institute of Chartered Accountants of India and according to these guidelines the incomes of the nature in question derived during the pre-construction period could be reduced from the cost of the capital work-in-progress or other expenditure incurred and only the balance of the expenditure could be capitalised. It was also pleaded that the adjustments that could be made under clause (3) of the proviso to section 143(1)(a) were of a limited nature and restricted to the carried forward losses, the deductions, allowances or relief claimed in the return and would not include any adjustments for bringing incomes of the nature in question to tax. In this context, reliance was placed upon the decision of the jurisdictional High Court in the case of Bank of America NT & SA v. Dy. CIT : [1993]200ITR739(Bom) . It was also pleaded that while considering whether an adjustment was of the nature of a prima facie inadmissibles or not within the meaning of these terms under section 143(1)(a), the legal position has to be examined as on the date of filing of the return and not on any date subsequent to the filing of the return. In other words, it was pleaded that it was immaterial that the decision of the apex court in the case of Tuticorin Alkali Chemicals & Fertilisers Ltd. v. CIT, (supra), was in favour of the department. This decision became available only on 8-7-1997, i.e.,

about 8 months after the date of filing of the return and so, could not be relied upon by the revenue for saddling the appellant with what was argued to be an unjustified liability of additional tax under section 143(1)(a).

7. The Commissioner (Appeals) rejected the above arguments. He listed a catena of decisions and also CBDT's circular in para 6.3 of his order in support of the proposition that the scope of adjustments made under section 143(1)(a) is restricted to issues which are not debatable at all. However, he rejected the claim of the assessee on the ground that a decision pronounced by the apex court has a retrospective effect and in view of the decision in the case of Tuticorin Alkali Chemicals & Fertilisers Ltd., (supra), it must be deemed that the incomes in question aggregating to Rs. 6,57,67,660 are taxable and they cannot simply be reduced from the cost of the capital work-in-progress and so, the adjustments made by the assessing officer had to be regarded in the light of this decision of the apex court as additions of prima facie inadmissibles. He also observed that the guidelines given by the Institute of Chartered Accountants on which the appellant relied have since been changed and as on the date of filing of the return, the applicable guideline given by them stipulated that the appellant had to provide for the income-tax liability on the incomes of the type involved in the aggregate amount of Rs. 6,57,67,600. He also observed that the decision of the Hon'ble Bombay High Court in the case of Maharashtra Electrosmelt Ltd., (supra) was distinguishable as it dealt with a case of interest on call deposits, which were purely short-term and did not involve interest on long-term deposits of the type from which the appellant derived its interest income. He also observed that there were two other decisions of the jurisdictional High Court on the date the return was filed, which held that such incomes as are in question are taxable. The two decisions cited by the Commissioner (Appeals) in this context are Godavari Sugar Mills v. CIT (1991) 191 ITR 359 (Bom) and CIT v. L & T Macneil Ltd. (1993) 202 ITR 662 (Bom). He also observed in para 7. 10(f) of his order that the adjustment made by the assessing officer was permissible under clause (3) to the proviso to section 143(1)(a) and for this proposition, he relied upon the decision of the Bombay Bench of the Tribunal dated 30-9-1997 in the case of Mafatlal Apparel Mfg. Co. Ltd. v. Dy. CIT, in ITA No. 1948/Bom/1992 for the assessment year 1989-90. He also observed that as per the decision of the Tribunal in the case of

Mangalore Refinery & Petrochemicals Ltd. v. Dy. CIT (Sic), which was available on the date on which the return of income had been filed by the appellant, the incomes in question were taxable. The appellant chose to ignore the two decisions of the jurisdictional High Court and also of the Tribunal and deliberately made a claim for deduction of the incomes from the cost of the capital work-in-progress which was unwarranted and so, the Commissioner (Appeals) concluded that a person opting to play with fire had no reason to complain of burnt fingers and so, he held that the adjustments in question were justified under section 143(1)(a) of the Act.

8. Before us, the learned counsel for the assessee has reiterated the contentions made out before the revenue authorities. In particular, he invited our attention to the decision of the Hon'ble Calcutta High Court in the case of Modern Fibotex India Ltd. & Anr v. Dy. CIT & Ors. : [1995]212ITR496(Cal) in which it was held that the date for judging the question of adjustments under section 143(1)(a) must be the actual date of the return in the light of the law then prevailing. The thrust of his argument is that the subsequent decision of the apex court in the case of Tuticorin Alkalies Chemical & Fertilisers, (supra), does not obliterate the -extent controversy on the date of filing of the return, whether the incomes in question were taxable or not. It is also made out that the provisions of section 143(1A) levying additional tax are of a penal nature and so, they should be interpreted strictly.

9. The learned Departmental Representative on the other hand, pleased that the assessee had claimed indirectly a deduction for the aggregate amount of Rs. 6,57,67,660 and so, the adjustment made by the assessing officer was permissible within clause (3) of the proviso to section 143(1)(a). In other words, the plea is that a claim for deduction from the capital work-in-progress has to be regarded as claim for deduction from the income. He has also reiterated the change in the guidelines issued by the Institute of Chartered Accountants, which we had already adverted to. He has also reiterated the view that the decision of the jurisdictional High Court in the case of Maharashtra Electrosmelt Ltd., (supra), in distinguishable for the reasons indicated hereinbefore.

10. We have to allow the appeal of the assessee. We find that the decisions of the jurisdictional High Court in the case of Godavari Sugar Mills v. CIT (supra) and CIT v. L and T Macneil Ltd. (supra) are distinguishable because in those decisions, the only question raised was whether the incomes in question were assessable under the head business or under other heads. The question whether they were taxable at all was not decided. In the circumstances, we are of the view that the assessee cannot be faulted for placing reliance on the decision of the jurisdictional High Court in the case of Maharashtra Electrosmelt Corporation Ltd., cited supra, which it did. Similarly, the decision of the Tribunal in the case of Mangalore Refinery & Petrochemicals Ltd. v. Dy. CIT (supra) by the Commissioner (Appeals) cannot help the Revenue in this appeal because of the binding decision of the jurisdictional High Court in the case of Maharashtra Electrosmelt Corporation Ltd. (supra) Further, we are of the view that a deduction claimed from the capital cost of the work-in-progress cannot be equated with a deduction, relief or allowance claimed from the incomes and the action taken by the assessing officer is hit by the ratio of the decision of the jurisdictional High Court in the case of Bank of America (supra). The Commissioner (Appeals) himself referred to a number of case law according to which adjustments on debatable issues are beyond the purview of section 143(1)(a). The learned counsel for the assessee has also referred to as many as 11 decisions on this issue, which may be seen in the index to his paper-book. It is not necessary to refer to all those decisions. As already mentioned the decision of the apex court in the case of Tuticorin Alkalies Chemicals & Fertilisers Ltd., (supra) was not available on the date of filing of the return and to our mind, it does not obliterate the controversy which was existing on the date of filing of the return regarding the taxability of the incomes derived during the pre- construction period by the assessee. We can do no better than to refer to the following portion of the headnote to the decision of the Hon'ble Calcutta High Court in the case of Modern Fibotex India Ltd. & Anr. (supra).

The power under section 143(1)(a) though described as a prima facie determination is not a temporary one in the sense that an interlocutory order is passed which is subject to a final order on further scrutiny. The intimation as far as the assessing officer is concerned is final and it entails immediate and drastic consequence unless corrected or revised by a higher authority under section 154

or section 264, as the case may be. The exercise of power under section 143(1)(a) of the Act is, therefore, required to be scrutinised carefully and kept strictly within the bounds of the statute, any dispute being resolved in favour of the assessee.'

11. In the above view of the matter, we have to hold that the adjustments made by the assessing officer by way of adding Rs. 6,57,67,660 are beyond the purview of section 143(1)(a). We accordingly, cancel these adjustments and the consequent levy of additional tax.

12. The appeal is allowed.

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