

Cit Vs. J.K. Cotton Spinning and Weaving Mills Co. Ltd.

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Court : Allahabad

Decided On : Jan-20-2005

Reported in : (2005)197CTR(All)70

Appeal No. : IT Ref. No. 66 of 1990 20 January 2005 A.Y. 1976-77

Appellant : Cit

Respondent : J.K. Cotton Spinning and Weaving Mills Co. Ltd.

Advocate for Pet/Ap. : Shambhu Chopra, *for the Revenue* R.S. Agrawal, *for the Assessee*

Judgement :

By the Court:

The Tribunal, Allahabad, has referred the following question under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), for the opinion to this court :

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that no profit be charged under section 41(2) of the Income Tax Act, 1961, on the sale of assets, the WDV of which was not ascertainable, instead of the WDV of, the remaining block of assets be reduced by the amount of sale receipts?'

2. The reference relates to the assessment year 1976-77. Briefly stated the facts giving rise to the present reference are as follows :

3. The respondent- assessee is a public limited company. During the assessment year in question it had sold certain items of old machinery and a few other items of furniture and fittings, etc. It had claimed that the written down value of these assets is not ascertainable, In the course of the assessment, the assessing officer noted that in the past also the respondent-assessee had shown the sale of assets whose costs and written down value could not be worked out by it. In those years, the full sale price had been taxed as provided under section 41(2) of the Act and there was no reason to depart from that practice. He was also of the view that the very fact that the respondent-assessee is not able to work out the cost of those assets would go to show that the assets are very old and depreciation must have been allowed on those assets equal to their cost. In this view of the matter, the entire sale price in respect of these assets was treated as profit under section 41(2) of the Act. Feeling aggrieved, the respondent preferred appeal before the Commissioner (Appeals) who following his earlier order for the assessment year 1973-74 had held that addition may be limited to 50 per cent of the receipt. Feeling aggrieved, the respondent-assessee preferred a further appeal before the Tribunal. The Tribunal after considering the pleas raised by the respective parties had held that the profit under section 41(2) may be taken at nil and the written down value of the remaining block of the assets be reduced by the amount received by the sale of the assets. The Tribunal has dealt with the issue in para 6 of its order which is reproduced below :

'We have considered the rival submissions. We have also gone through the Tribunal's order relating to the assessment year 1973-74. In that order, the Tribunal had considered an order of the Delhi Bench of the Tribunal in ITA No. 3681 of 1971-72. In that case also, separate written down value of the items sold could not be ascertained. In such a situation, the Tribunal had held that there could be two alternatives, namely, either to take the whole of the amount, as the profit or to take the profit as nil and to reduce the written down value of the remaining block by the amount of the sale proceeds. The formula adopted by the Tribunal was a via media and in that case, on rough basis, 50 per cent of the sale

price was treated as profit under section 41(2). There appears force in the contention of the revenue that if this formula is applied, from year to year, then the assessee may get undue advantage and it may result in loss of revenue. In case the other formula is applied and the written down value of the remaining block of assets is reduced by the sale proceeds, then the interest neither of the assessee nor of the revenue would be prejudiced. In the circumstances, we consider it appropriate to apply that formula, and direct that this year profit under section 41(2) of the Act may be taken at nil and the written down value of the remaining block of the assets be reduced by the amount of receipts. We order accordingly.

4. We have heard Shri Sambhu Chopra, learned standing counsel for the department and Shri R.S. Agrawal, learned counsel appearing for the respondent-assessee. The learned standing counsel submitted that there is no legal backing in respect of the approach adopted by the Tribunal in directing to reduce the value of the assets by the amount of the sale proceeds. According to him, there is no equity in tax matters and, therefore, the middle path adopted by the Tribunal was not warranted. He further submitted that if difference in the amount of sale price and written down value is to be treated as profit under section 41(2) of the Act, the Tribunal ought to have decided the appeal in the light of section 41(2) of the Act and not otherwise.

5. Shri R.S. Agrawal, learned counsel submitted that as the written down value of the assets sold was not ascertainable, the approach of the Tribunal in directing for reducing the value of the fixed assets by the amount of sale proceeds was fully justified.

6. Having heard learned counsel for the parties, we are of the considered opinion that the approach of the Tribunal was wholly illegal and unwarranted.

It did not have the backing of the statutory provisions. Under section 41(2) of the Act the difference of the sale price and the written down value of the depreciable assets is to be treated as profit for the year in which the sale of depreciable assets had taken place. The value of the assets so sold is not ascertainable and is very old; the, assessing authority was fully justified in treating, the entire sale proceeds as profit chargeable to, tax. It is upon the respondent assessee to show by cogent

material the written down value of the depreciable assets which have been sold. Having failed to do so, the Tribunal ought to have applied the provisions of section 41(2) of the Act.

7. In view of the foregoing discussions, we answer the question of law referred to us in the negative, i.e., in favour of the revenue and against the assessee. But there shall be no order as to costs.

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