

Mohta Industries Ltd. Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jan-18-1984

Reported in : (1984)8ITD14(Delhi)

Judge : D Vyas, Rajendra

Appellant : Mohta Industries Ltd.

Respondent : inspecting Assistant

Judgement :

1. The assessee is aggrieved against the IAC (Assessment's) order under Section 154 of the Income-tax Act, 1961 ('the Act') which was confirmed by the Commissioner (Appeals).
2. The assessee is a limited company manufacturing steel ingots from steel scrap at its factory at Ludhiana. Its account year is ending 31-5-1974. It had installed (a) one 10 ton electric arc furnace on 11-8-1973, and (b) one 5 ton electric arc furnace on 4-3-1974. The controversy is regarding extra shift allowance (ESA) (Triple shift) on the latter 5 ton arc furnace, which worked for 89 clays in the account year under consideration. The assessee in the statement filed with the original return had claimed ESA for triple shift at 100 per cent on both the arc furnaces, at Rs. 7,44,983 which was equal to 100 per cent of the normal depreciation of Rs. 7,44,983 which was claimed at the rate of 10 per cent on the plant and machinery of Rs. 74,49,831. The assessee, however, later filed a revised return claiming depreciation at the rate of 15 per cent on the cost of the said arc furnaces instead

of 10 per cent depreciation claimed in the original return. The ITO discussed this matter in the assessment order and allowed depreciation at the rate of 10 per cent. The ITO further noticed in the assessment order that the assessee had claimed ESA for triple shift for whole of the year and that the 'concern' had worked for 272 days which was more than the normal working days of 240 days and that the ITO had verified that the concern worked for triple shift throughout the year. He, therefore, allowed the assessee's claim for ESA for full year. The ITO in the assessment order did not mention that the second arc furnace of 5 ton had worked only for 89 days. Depreciation of Rs. 17,36,885 was allowed in the assessment order dated 6-7-1978.' The said depreciation was as per chart annexed to the assessment order. In the said chart, the ITO has allowed ESA at 10 per cent for triple shift on both the arc furnaces without any discussion.

3. The IAC (Assessment) thereafter, issued a notice under Section 154 to the assessee. The said notice has not been made available to us by the assessee. However, we have been supplied a copy of the assessee's reply dated 28-5-1982 in which the assessee objected to the IAC (Assessment) restricting ESA to 89 days of working of the 5 ton arc furnace of following ESA for the full year (sic). The assessee urged that ESA had been rightly allowed as per provision of law as ESA was allowed to a concern as a whole and not on the individual working of machines which, according to the assessee, was clear by reading sub-item (iv) of Part I of Appendix I to the Income-tax Rules, 1962 ('the Rules') and that same view had been taken by the Tribunal, Delhi Bench 'C' in Hindustan Kokoku Wire Ltd. in [IT Appeal No. 5296 (Delhi) of 1975-76 by order dated 29-9-1977 for the assessment year 1972-73 and this was affirmed by the Tribunal, Delhi, Special Bench in ITO v. J.K.Synthetics Ltd. [IT Appeal No. 630 (All.) of 1978-79, dated 13-8-1979 for the assessment year 1970-71]--since reported in [1982] 1 SOT 415, 4. The IAC (Assessment), however, passed order on 4-7-1982 under Section 154 observing the triple shift allowance was to be allowed in proportion to the days (for which the plant actually worked triple shift) bore to the normal number of working days during the previous year and that the assessee-company itself had claimed extra shift allowance at Rs. 49,522 only on the 5 ton arc furnace, when the normal depreciation on the said furnace was claimed at Rs. 3,15,250 which showed that the assessee had claimed ESA only for 89 days of working and that the assessee

had not filed any reply to the show-cause notice under Section 154 and, therefore, the assessee-company had presumably no objection to the proposed rectification. The IAC (Assessment), accordingly, reduced the ESA (depreciation) on the said furnace by Rs. 1,80,272.

5. The assessee carried the matter to the Commissioner (Appeals) who upheld the IAC (Assessment)'s order by rejecting the assessee's contention that the matter was debatable in view of the aforesaid two decisions of the Tribunal in the cases of Hindustan Kokoku Wire Ltd. and J.K. Synthetics Ltd. (supra). The Commissioner (Appeals) observed that the High Courts had consistently taken the view against the assessee in *Anantapur Textiles Ltd. v. CIT* [1979] 116 ITR 851 (Cal.), *Kundan Sugar Mills v. CIT* [1977] 106 ITR 704 (All.), *Ganesh Sugar Mills Ltd. v. CIT* [1969] 73 ITR 395 (Cal.) and *Raza Sugar Co. v. CIT* [1970] 76 ITR 541 (All.). Following *CIT v. Smt. Godavaridevi Saraf* [1978] 113 ITR 589 (Bom.), the Commissioner (Appeals) held that only one view had been taken by the High Courts, namely, that ESA should be allowed only on the actual working of days of the machinery and not on the total working of days of the concern. He also referred to the extracts from Minutes of the 19th Meeting of DTAC held on 5-11-1966 (at page 121 of Taxmann's Direct Taxes Circulars, Vol. 1, 1980 edn.) where the Government had informed the committee that double or triple shift allowance should be granted only in respect of that machinery which had actually worked double or triple shift for a concern and not in respect of the entire machinery in the concern. This was to allay their fears that ESA (depreciation) was being denied on the ground that the word 'concern' appearing in the rules meant the whole concern in contradiction to any one shop or shops of the industrial concern. It was pointed out that for the purpose of ESA, it is not necessary that all the machinery in the concern should work extra shift but where some of the machinery or plant worked extra shift, the depreciation in that regard was admissible in respect of that machinery or plant. The Commissioner (Appeals) observed that the assessee had clearly claimed ESA only with regard to the number of days of working of the second arc furnace of 5 ton but the ITO by mistake had computed ESA at 100 per cent of normal depreciation and there was nothing to show from the assessment order that the ITO applied his mind to this aspect of the matter and that by weighing the views, pros and cons on the language of the relevant items in the

rules, it appeared that the computation made by the ITO in the depreciation chart attached to the assessment order was a mistake inadvertently made and it appeared to be more a mistake without any debate with regard to the interpretation of law more so when the assessee itself had claimed ESA in accordance with law (by restricting the claim to 89 days of working of the 5 ton arc furnace).

Therefore, there was a mistake apparent on the face of the record and, therefore, the ITO was justified to correct the said mistake.

6. At the hearing before us, the learned counsel for the assessee urged that the scope for rectification under Section 154 was limited and in view of the aforesaid two orders of the Tribunal in the cases Hindustan Kokoku Wire Ltd. and J.K. Synthetics Ltd. (supra), the matter was clearly debatable if not very much in favour of the assessee and considering the language of sub-item (iv) of Part I of Appendix I of the Depreciation Table as per the rules and the CBDT's letter dated 28-9-1970, it was clear that the ITO had rightly allowed ESA for the full year on the 5 ton arc furnace. The CBDT's letter dated 28-9-1970 reads as under: Vol. XVI No. 4 March, 1971, quarter of CBDT Bulletin 'Calculation of depreciation--Extra shift allowance in respect of Plant and Machinery: Reference is invited to CIT (Central) Calcutta's letter No. A/21233/CT/ 6A-102/1969-70, dated the First November, 1969, on the above subject. The Board have decided that where a concern has worked double shift or triple shift, extra shift allowance will be allowed in respect of the entire plant and machinery used by the concern without making any attempt to determine the number of days on which each machine actually worked double or triple shift during the relevant previous year.

[CBDT's Letter No. 10/83/1969-IT (All.), dated 28-9-1970]. Ref. No. XVI/II/93.

7. The learned departmental representative pointed out that letter dated 28-9-1970 was not a circular issued by the CBDT but was only departmental instructions issued by the CBDT for the guidance of the departmental officers and the said instruction was confidential. As against that, the minutes of the 19th Meeting of DTAC held on 5-11-1966 given in Taxmann's Direct Taxes Circulars mentioned supra was for the guidance of the public and the latter instructions would show that

the ESA was to be allowed machinery-wise and not for the whole concern.

8. We have considered the submissions of both the parties. Sub-item (iv) of Appendix I of Depreciation Table as per the rules reads as under: An extra allowance, up to a maximum of an amount equal to one-half of the normal allowance shall be allowed where a concern claims such allowance on account of double shift working and establishes that it has worked double shift. An extra allowance, up to a maximum of an amount equal to the normal allowance, instead of one-half of the normal allowance, shall be allowed where a concern claims such allowance on account of triple shift working and establishes that it has worked triple shift.

The calculations of the extra allowance for double shift working and for triple shift working shall be made separately in the proportion which the number of days for which the concern worked double shift or triple shift, as the case may be, bears to the normal number of working days during the previous year. For this purpose, the normal number of working days during the previous year shall be deemed to be-- (a) in the case of a seasonal factory or concern, the number of days on which the factory or concern actually worked during the previous year or 180 days, whichever is greater; (b) in any other case, the number of days on which the factory or concern actually worked during the previous year or 240 days,, whichever is greater.

It is clear from the reading of the above rule that ESA is to be allowed considering the number of days for which the concern worked double shift or triple shift and in the said rule, there is no reference to the number of days for which different items of machinery worked double shift or triple shift. This interpretation is supported by the CBDT's letter dated 28-9-1970, extracted above. The CBDT's clarification of 5-11-1966 is only to help those assessees who have not worked the entire concern but have worked some of the shops of that particular concern. Even the letter of 5-11-1966 cannot be understood to refer to specific items of machinery which have worked double shift or triple shift. Further, the Tribunal, Special Bench's decision in J.K. Synthetics Ltd.'s case (supra) and the Delhi Bench's decision in Hindustan Kokoku Wire Ltd.'s case (supra) clearly support the assessee's claim for allowance

of ESA to the whole concern and not to restrict it to the days for which different machineries worked. The decisions in the cases of Anantapur Textiles Ltd. and Kundan Sugar Mills (supra) relate to the assessment year 1964-65 and earlier years after which years, the depreciation provisions have been recast. In those years, no depreciation was allowable where the machinery worked for 30 days or less and 50 per cent depreciation was allowable where the machinery worked up to 180 days and 100 per cent depreciation was allowable when the machinery worked for more than 180 days. However, Rule 5 of the rules was amended with effect from 1-4-1970 and full depreciation is admissible in respect of any asset which is used at any time, however, short during the accounting year. The said decisions, therefore, are not very relevant for considering the allowance of depreciation after 1970. In any event, the matter is highly debatable, more so in view of the aforesaid decisions of the Tribunal, Special Bench and the Tribunal, Delhi Bench. Under these circumstances, much cannot be made of the assessee restricting its claim of ESA in one of the charts filed with the revised return claiming ESA for 5 ton arc furnace for the number of days the said furnace was worked. The learned Counsel for the assessee urged that the assessee had claimed ESA for the full years working and the said chart claiming ESA for the number of days the 5 ton furnace worked was filed only on the ITO's requisition. Be that as it may, it is clear that the matter is highly controversial and debatable and, therefore, the ITO was not justified in withdrawing the ESA in order under Section 154, more so when the ITO had himself allowed ESA for the full year on the 5 ton arc furnace. We, accordingly, accept the assessee's contention that the matter being debatable, the ITO's order under Section 154 deserve to be quashed. We, accordingly, quash the ITO's order under Section 154 and allow the assessee's appeal.