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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Sep-22-1990

Reported in : (1990)35ITD470(Mum.)

Judge : V Dongzathang, G Israni

Appellant : inspecting Assistant

Respondent : Tata Press Ltd.

Judgement :

1. By this appeal, the revenue has challenged the order of the learned Commissioner of Income-tax (Appeals) (Commissioner Appeals) for short) dated 4-4-1986 in relation to the assessment year 1984-85. The following grounds have been raised in this appeal, viz: 1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing Rs. 3,98,737 Under Section 43B as correctly disallowed by the IAC(A).

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that Rs. 75,475 paid through Tata Services is not covered Under Section 37(3A) of the IT Act 3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition of Rs. 18,18,097 from the assessment on the ground that the bad debts had been properly written off.

2. Ground No. 1. The assessee is a company carrying on the business of printing. The Inspecting Assistant Commissioner of Income-tax (Assessment) (Assessing

Officer for short) found that the assessee had debited a sum of Rs. 21,84,319 to the profit and loss account in respect of the liability by way of contributions to gratuity fund, superannuation fund, provident fund, etc. However, in the computation of the total income, deductions were claimed to the extent of Rs. 25,83,055 on payment basis. It was claimed before the Assessing Officer that in view of the newly inserted Section 43B the deductions in respect of the statutory liability are allowable on the basis of payment and as such notwithstanding the fact that a part of the assessee's claim related to the liabilities accruing in the subsequent year, the entire amount of Rs. 25.83.055 paid during the year was allowable. The Assessing officer rejected the assessee's contention on the ground that Section 43B is not authorising" section but a prohibitive one. The Assessing Officer accordingly held "that only the liabilities which had arisen during the year and had actually been paid, would be eligible for deduction. On this basis, he allowed the liability to the extent of Rs. 20,53,674 only and disallowed the rest.

Before the learned Commissioner (Appeals) it was contended on behalf of the assessee that under the terms of the newly inserted Section 43B only the payment basis has to be followed for the" allowance of statutory liability and whether a liability had actually accrued during the year or not would be immaterial for the purpose of allowing a deduction in respect of such liability. This argument found favour with the learned Commissioner (Appeals), who, after taking note of (the following portion of Section 43B, held that the previous year in which the liability to pay the statutory dues had arisen is to be ignored for the purpose of allowing deduction in respect of such statutory liability, viz: (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) The learned Commissioner (Appeals) further found that the Assessing Officer had erroneously presumed that the statutory liabilities specified in Section 43B can be allowed only if they accrued during the year and are also paid during the year.

3. During the course of his arguments before us, the learned counsel for the assessee reiterated the same pleas which were made before the Commissioner (Appeals). After a careful consideration of these arguments and the provisions of Section 43B, we find no hesitation in coming to the conclusion that the view of the

legal provisions taken by the learned Commissioner (Appeals) was wholly erroneous and cannot be sustained. We are in entire agreement with the Assessing Officer that the provision contained in Section 43B is essentially restrictive in nature and not an enabling one. The object of this provision was to curb the tendency of the assesseees to claim deduction of statutory liabilities on accrual basis in an earlier year and defer the payment of the same to a subsequent year. This object could never be that to allow deduction on payment basis in an earlier year of the liabilities, which may (or may not) accrue in a subsequent year(s). The payment in such a case would be essentially an advance payment of a liability, which is contingent in nature and may accrue in future. In this connection, it would be pertinent to make a reference to the words "a deduction otherwise allowable" occurring in the opening portion of Section 43B and the word "was" occurring between the words "such sum" and "incurred by" in that Section. The use of the words "a deduction otherwise allowable" clearly indicates that such a deduction should be otherwise allowable in the year in which it is claimed. Similarly, the use of the word "was" clearly indicates that a deduction, which accrued in any past year, can validly be claimed if the amount thereof is actually paid in a subsequent year. Its converse cannot be true. In other words, where as a liability accruing in an earlier year can be claimed as a deduction in a subsequent year if the amount thereof has actually been paid in such subsequent year. It is not legally permissible to claim a deduction, the payment whereof has been made in an earlier year, but the liability whereof may accrue in a subsequent year. To take a contrary view would tantamount to allowing deductions of the payments made in advance. Permitting deduction on the basis of such advance payment is bound to lead to the results which would be incongruent and are not intended by the provisions of Section 43B. Allowing deductions of advance payments would open floodgates for the assesseees to make advance payments of such liabilities for any number of subsequent years and claim the deduction thereof in an earlier year, if doing so proves advantageous to them. The learned counsel for the assessee stated before us that in the case the assessee has made payments solely in excess of the assessed/estimated statutory liabilities by way of abundant caution to avoid penalties/interests.

Such an assessee cannot be made to suffer for his/its being a prudent businessman. In this context, the learned counsel expressed an apprehension that since the excess payments were actually made during the year under appeal, the assessee may not be allowed deductions on such excess payments in the subsequent year of accrual on the ground that the requirement of payment during the year of accrual was not fulfilled. We feel that this apprehension of the assessee or its counsel is unfounded and is otherwise capable of being taken care of by proper method of accounting and assessment. Any such excess payment can validly be treated as an advance payment by passing reverse entries in the accounts of the assessee. Such amount may thus be shown as an asset and the same may be adjusted against the corresponding dues which may accrue in a subsequent year. Where such advance payment is adjusted in the payment of statutory dues for a subsequent year, it will not be open to any income-tax authority to deny deductions claimed in such subsequent year on the ground that the same were not actually paid in that year. An adjustment in a particular year of statutory dues paid in advance in an earlier year amounts to payment, by way of adjustment, in that particular year. These observations of ours would, in our opinion, take full care of the apprehension, which the assessee may have, of possible denial by the income-tax authorities of the claims of such deductions in the subsequent year(s). Subject to these observations, we reject the assessee's contention for the year under appeal and allow this ground of the appeal.

4. to 9. [These paras are not reproduced here, as they involved minor issues.]

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