

Escorts Electronics Ltd. Vs. Inspecting Assistant

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Mar-21-1991

Reported in : (1991)37ITD402(Delhi)

Judge : M Agarwal, J Kathuria

Appellant : Escorts Electronics Ltd.

Respondent : inspecting Assistant

Judgement :

1. These are cross appeals by the assessee and the revenue arising out of the assessee's assessment for assessment year 1982-83. We have heard the learned counsel for the assessee and the learned Departmental Representative and have perused the material placed before us.

2. The assessee is a public limited company. It was incorporated for the purpose of the business of manufacture and sale of X-Ray equipment and spare parts to be manufactured in India in collaboration with a French company known as M/s C.G.R. France. The said business came to an end sometimes during the accounting period ending 31-12-1980 relevant to assessment year 1981-82. We are now concerned with assessment year 1982-83 and it is admitted to the assessee that during this year the assessee carried on no business. During the year under consideration the assessee sold its technical drawings and industrial files that it had acquired for its aforesaid business. The sale was made for a consideration of Rs. 12,48,000. It also earned profit of Rs. 31,286 on the sale of

some other assets and had other income of Rs. 83,374. Thus, for the year under consideration its total receipts were Rs. 13,62,660.

Against the said income the assessee claimed an expenditure of Rs. 15,43,382. The assessee had claimed that the said income be assessed as income from business but the ITO held that the business had already ceased. He, therefore, assessed the aforesaid items of receipts as income from other sources and out of the expenses claimed he allowed only 10% thereof as being related to the said income. The assessee appealed to the CIT (Appeals) contending, inter alia, that the said income should have been assessed as income from business, that the entire expenditure should have been allowed along with depreciation amounting to Rs. 5,83,721. During the hearing of the appeal before the CIT(A) the assessee raised additional grounds contending that the amount received by sale of drawings and industrial files was a capital receipt not chargeable to tax and that depreciation of earlier years that remained unabsorbed should have been adjusted against the income in question. The learned CIT (A) upheld the ITO's action in assessing the income under the head 'other sources'. The claim for depreciation of the current year was not pressed before the CIT(A). The additional ground relating to the capital nature of the receipt was decided against the assessee, but the other ground regarding set off of unabsorbed depreciation was accepted and it was held that such depreciation be adjusted against the income in question. The CIT (Appeals) also upheld the allowance of only 10% of the expenditure against the income in question.

3. Against the orders of the CIT(A) the Revenue has come in ITA No.4684 challenging his direction for the set off of unabsorbed depreciation. On the other hand, the assessee in its appeal challenges the CIT (Appeals)'s action upholding the allowance of only 10% of the total expenditure.

4. The fact that the assessee's business had ceased in the preceding year and no business was continued during the year under consideration is no longer challenged by the assessee and, therefore, the question is whether unabsorbed depreciation of an earlier year can be set off against the income from other sources. When neither the business to which the unabsorbed depreciation relates

nor any other business of the assessee was in existence during the year under consideration. On behalf of the Revenue reliance was placed on *Indian Bank Ltd. v. CIT* [1985] 152 ITR 557, *Tube Suppliers Ltd. v. CIT* [1985] 152 ITR 694 and *East Asiatic Co. (India) (P.) Ltd. v. CIT* [1986] 161 ITR 135. All these are judgments of the Hon'ble Madras High Court and lay down that unabsorbed depreciation of earlier years cannot be set off against income from other sources. We would, therefore, deal with only the latest of them in *East Asiatic (India) (P.) Ltd.'s case (supra)*. In that case the assessee did not have any business activity in the relevant previous year and was engaged only in the collection of debts.

There was unabsorbed depreciation of earlier years which the assessee claimed to be set off against other income, which included income amounting to Rs. 49,802 determined under Section 41(2) of the Act. The Hon'ble High Court held that unabsorbed depreciation of earlier years cannot be set off against income from other sources and that by virtue of Section 41(2) the business cannot be deemed to be in existence for other purposes of the Act and the fiction created by the Explanation to Section 41(2) is only for the purpose for which it had been created and this fiction cannot be extended beyond the said purpose so as to treat the business as having continued for all purposes particularly for Section 32(2).

5. On the other hand, the learned counsel for the assessee relied on *CIT v. Estate & Finance Ltd.* [1978] 111 ITR 119 (Bom.), *Hyderabad Construction Co. Ltd. v. CIT* [1981] 129 ITR 81 (AP), *CIT v. Kishanlal & Sons (Udyog) (P.) Ltd.* [1985] 154 ITR 735 (Cal.) and *Or v. Deepak Textile Industries Ltd.* [1987] 168 ITR 773 (Guj.). In all these cases it was held that the business, to which the unabsorbed depreciation relates, need not be carried on during the year in which the set off of unabsorbed depreciation is claimed. All these are cases in which some other business of the assessee was in existence and set off of unabsorbed depreciation was held allowable against such business income. Therefore, these authorities lay down no proposition of law to support the case of the assessee that unabsorbed depreciation of an earlier year can be set off in a later year even if no business whatsoever was carried on by the assessee in such later year.

6. The learned counsel for the assessee also placed reliance on *Raj Narain Agarwala v. CIT* [1970] 75 ITR 1 (Delhi). This ruling does not deal with the controversy that we now have before us. That was a case in which a partner of a dissolved firm claimed carry forward of the loss of the firm allocated to it. Admittedly the assessee derived income from business in the year under consideration and the controversy was whether the loss allocated to the partner amounting to Rs. 1,76,917 contained some unabsorbed depreciation allowance accumulated in the hands of the firm. It was held that the Tribunal could hold an enquiry into the matter. The learned counsel for the assessee referred to certain observations at pages 5 and 6 of the Report which suggest that carrying on of some business may not be necessary for the adjustment of unabsorbed depreciation and that the same can be adjusted against income under other heads. These observations are obiter as such was not the controversy before the Hon'ble High Court in that case and the Hon'ble High Court has specifically stated that since that matter was not before it, it was not being finally decided. Reliance was also placed on a judgment of the Hon'ble Supreme Court in the case of *CIT v. J.K. Hosiery Factory* [1986] 159 ITR 85 at page 90, where it was observed that for the purpose of setting off unabsorbed depreciation carried forward from a preceding year, it was not necessary that a business, in respect of which the depreciation allowance was originally worked out, should remain in existence in such succeeding year. The observations clearly indicate that they do not apply to the situation before us in which admittedly no business whatsoever was carried on by the assessee during the year under consideration.

The Hon'ble Supreme Court was dealing with a case of a partnership which continued from year to year and the only difference was that while in the earlier years, to which the unabsorbed depreciation related, it was assessed as an unregistered firm; for the year in which adjustment as sought the firm was assessed as a registered firm. It was held that unabsorbed depreciation of an unregistered firm can be set off in a succeeding year even though the same firm was assessed as a registered firm. Reliance was also placed on *CIT v. Cocanada Radhaswami Bank Ltd.* [1965] 57 ITR 306 (SC), in which the carry forward and set off or loss incurred in banking business was allowed to be set off in a succeeding year against income from securities. The Hon'ble Supreme Court held that such

interest from securities was a part of the income from business. This authority too, therefore, does not help the assessee. Lastly, reliance was placed on CIT v. Jaipuria China Clay Mines (P.) Ltd. [1966] 59 ITR 555 (SC). In this case it was held that unabsorbed depreciation of earlier year has to be added to the current year's depreciation and the total of the two sums becomes the depreciation allowable to the assessee, which can be set off even against income under heads other than business. This authority too does not apply to the facts of the present case. The reason is that in the year under consideration the assessee did not carry on any business and even the claim for current year's depreciation was not pressed before the CIT(Appeals). Therefore, depreciation of the preceding year cannot become the depreciation for the year under consideration to be set off against income from other sources.

7. A perusal of the various authorities cited on both sides would indicate that the Madras judgments including East Asiatic Co. (India) Ltd. (supra) are the only judgments that squarely apply to the present case and the authorities cited on behalf of the learned counsel for the assessee do not support the contention that even in the absence of any business whatsoever in a particular year, unabsorbed depreciation of an earlier year can be set off against income under heads other than business. We are therefore, of the view that the learned CIT(Appeals) was not justified in reversing the finding of the assessing officer and directing adjustment of unabsorbed depreciation of earlier years against the income of the assessee for the year under consideration assessed under the head 'Income from other sources'. We, therefore, set aside the CIT (Appeals)'s order on this point and restore the action of the assessing officer.

8 and 9. [These paras are not reproduced here as they involve minor issues].

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