

A.T.E.(P.) Ltd. Vs. Assistant Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Feb-27-1998

Appellant : A.T.E.(P.) Ltd.

Respondent : Assistant Commissioner of

Judgement :

1. The appeal of the assessee, for assessment year 1983-84, is directed against the order dated 26-10-1990 of Commissioner of Income-tax (Appeals)-I, Mumbai. Rival contentions have been heard and records perused.
2. The first ground of appeal is in regard to reimbursement of medical expenses which have been held as part of the salary for purposes of calculation of disallowance under section 40A(5)/40(C). This issue is covered against the assessee by the decision of the Supreme Court in the case of CIT v. Mafatlal Gangabhai & Co. Ltd. [1996] 219 ITR 644/85 Taxman 381. In this case it has been held that the reimbursement of medical expenses does not amount to perquisites but forms part of the salary.
3. We respectfully following the aforementioned decision of the Supreme Court, dismiss this ground of appeal raised by the assessee.
4. The second ground of appeal is relating to the disallowance of interest of Rs. 17,000 on account of interest free advance of Rs. 1,00,000 given the assessee to Shri S. R. Parikh. This issue is covered in favour of the assessee by the decision of the Tribunal in assessee's own case for assessment year 1982-83, in T.A. No.

4505 (Bom.) of 1986, order dated 31st August, 1990.

5. Respectfully following the aforementioned decision of the Tribunal, we allow this ground of appeal and delete the addition of Rs. 17,000.

6. The third ground of appeal is relating to the disallowance of Rs. 21,880 on account of compensation paid to the workers on the transfer of Thane Machine Shop Division to Ahmedabad. The assessee had four units out of which one unit which had been taken on lease was closed. A sum of Rs. 21,880 was paid as compensation to the workers on the closure of Thane Machine Shop Division.

7. The learned counsel for the assessee contended that the assessee had not closed its business but had shifted the workshop from Thane to Ahmedabad. In these circumstances, the compensation paid to the workers was allowable as a business expenditure. It was further contended that the compensation paid to the workers would not be allowable in case there is a closure of business.

8. The learned departmental representative relied upon the orders of the revenue authorities.

9. In our considered view, the assessee deserves to succeed. This is not a case of closure of the business of the assessee. One unit of the assessee has been shifted from Thane to Ahmedabad and some of the employees had to be given compensation. Since, the business of the assessee continues, the expenditure laid out for purposes of business is allowable as a revenue expenditure. The addition of Rs. 21,880 is accordingly deleted.

10. Ground No. 4 is relating of the disallowance of Rs. 14,136 on presentation articles 13,768 on tea and mango parcels. The disallowance has been made under rule 6B. Reliance has been placed on the decision of the Bombay High Court in the case of CIT v. Allana Sons (P.) Ltd. [1995] 216 ITR 690 in support of the contention that the disallowance is unwarranted.

11. Since the issue is covered in favour of the assessee by the aforementioned decision of the Bombay High Court, the disallowance of Rs. 26,904 is deleted.

12. Ground No. 5 is relating to the disallowance of investment allowance to the extent of Rs. 3,679. The disallowance has been made on the ground that the assessee had not created the reserve.

13. The learned counsel for the assessee invited our attention to the printed accounts, page 16, to establish that a reserve had been created by the assessee.

14. Since the claim of the assessee is verifiable from records, we direct the Assessing Officer to consider the claim of the assessee in accordance with law, after verification.

15. The sixth ground of appeal is relating to the addition of Rs. 3,51,675 on account of compensation received from insurance company on break down of TOS Boring machine.

16. The relevant facts, relating to this issue, are that the assessee had procured TOS Boring machine on lease and as per the terms of the agreement, the assessee was responsible to repair and bring the machine into the original working condition in the event of any machinery break down. For this purpose, the assessee had taken insurance policy and during the year under appeal, on there being a break down of the machinery, a claim of Rs. 10,11,000 was granted by the insurance company. Against the said receipt, the assessee incurred an expenditure of Rs. 6,59,325 to bring the machinery in to its original working condition. The difference of Rs. 3,51,675 has not been offered as a revenue receipt on the ground that it is a capital receipt and not taxable under section 41(2). The Assessing Officer has held that as per the details it is clear that the amount received by the assessee was for loss of profit due to break down and not for loss of a capital asset. He has accordingly treated the surplus as a revenue receipt. The CIT (Appeals) has confirmed the addition.

17. The learned counsel for the assessee has relied upon the decision of the Supreme Court in the case of CIT v. Sirpur Paper Mills Ltd. [1978] 112 ITR 792 and it was contended that the issue is directly covered by the aforementioned decision of the Supreme Court, which has approved the decision of the Andhra Pradesh High Court.

18. The learned DR, on the other hand, contended that the decision of the Supreme Court was distinguishable on facts. In that case the assessee was the owner of the machinery whereas in the case of the appellant the machinery was on lease. The expenditure incurred by the assessee on repairs of the machinery were of revenue nature and the surplus received by the assessee was of revenue nature and was accordingly assessable to tax.

19. We have given our careful consideration to the rival contentions.

The assessee had procured the machinery on lease. One of the conditions agreed upon was that in the event of break down of the machinery the assessee shall be responsible to bring the machinery in its original condition. (Normal wear and tear was acceptable). During the year under appeal, there was a break down of the machinery. The assessee had to incur expenditure in order to bring the machinery into its original condition. The expenditure so incurred was in the course of business and accordingly qualified for deduction as a revenue expenditure.

However, the assessee as a prudent businessman, had taken up a policy of insurance, by virtue of which the insurance company had agreed to bear the cost of repairs in respect of the leased machinery in the event of a break down. As a result of this insurance cover the assessee received Rs. 10,11,000 from the insurance company. This was in excess of the actual expenditure incurred by the assessee for restoring the machinery in its original working condition. Since, the machinery on lease was used for purposes of business, the expenditure incurred by the assessee for restoring the same in its original working condition was an allowable expenditure for putting the income from business.

However, since the assessee had received the amount from the insurance company, the expenditure was set off out of that amount. The insurance premium paid of Rs. 20,000 has been claimed as a revenue expenditure.

If the assessee had received lesser amount from the insurance company than the expenditure incurred for restoring the machinery into its original condition, the difference between the actual expenditure and the amount received from the insurance company would have been allowable as a revenue expenditure.

However, in this case, there has been a surplus. When the deficiency on account of expenditure on repairs is allowable as a revenue expenditure, why should not the surplus be assessable as a revenue receipt 20. In the case of *Raghuvanshi Mills Ltd. v. CIT* [1952] 22 ITR 484 (SC), the assessee-company insured its mills with certain insurance companies and took out certain policies known as 'consequential loss policy' which insured against loss of profit, standing charges and agency commission. The mills were completely destroyed as a result of fire. The question was whether the amount paid to the assessee by the insurance companies was assessable to income-tax. The Supreme Court held that the amount received by the assessee was income and so was taxable.

21. In the case of *V. S. S. v. Meenakshi Achi v. CIT* [1966] 60 ITR 253 (SC), the assessee owned rubber plantation in the Federated Malay States outside Penang. Out of a fund into which cesses collected under the Rubber Industry (Replanting) Fund Ordinance, 1952, on rubber produced in Penang and rubber exported from the Federation other than Penang, were paid, proportionate parts of the cesses so collected, after defraying expenses, were credited to the accounts of the assessees, corresponding to the amount of rubber produced by them, and payments were made to the assessees from the amounts so credited against expenditure incurred on the maintenance of the plantations. In this case it was held that the amounts from the fund earmarked for the assessee on the basis of the rubber produced by them were paid against the expenditure incurred by them for maintaining the rubber plantations and producing the rubber, the amount received by the assessee were revenue receipts and therefore liable to be included in their assessable income.

22. The decision of the Supreme Court in the case of *Sirpur Paper Mills Ltd.* (supra) is distinguishable on facts. In that case the fire insurance policy was against the destruction of the machinery owned by the assessee by fire. Their Lordships of the Supreme Court had considered two questions as under :- "1. Whether, on the facts and in the circumstances of the case, the receipt of Rs. 7,83,207 being part of the amounts received from the insurance companies by the assessee was a capital receipt or revenue receipt 2. If it is held to be capital receipt, whether on the facts and in the circumstances of the case the said sum of

Rs. 7,83,207 is deductible from the written down value of the plant and machinery as at the commencement of the accounting year relevant for the assessment year 1962-63 ?" 23. In respect of the first question, their Lordships of the Supreme Court held as under :- "So far as the first question is concerned, it was not disputed on behalf of the revenue that the sum of Rs. 7,83,207 received by the assessee represented capital receipt in its hands and this question must accordingly be held to have been rightly answered by the High Court against the revenue." 24. It is evident from above that the decision of the Supreme Court is distinguishable on facts as in that case the assessee was the owner of the machinery and the compensation was paid for replacement of the capital asset. In the present case the insurance was for compensation of the revenue expenditure which the assessee was likely to incur in the course of, carrying on of its business.

25. In the case of *Universal Radiators v. CIT* [1993] 201 ITR 800/68 Taxman 45 (SC), their Lordships of the Supreme Court held that "in order that a receipt may not be taxable in view of section 10(3) of the Income-tax Act, 1961, the receipt should not only have been casual and non-recurring but it should not have been a receipt arising from business. To put it the other way, if an income arose in the usual course of business, then it would not have been liable for exclusion even if it was casual and non-recurring in nature". Their Lordships further held that "where payment is made to compensate for loss of the use of any goods in which the assessee does not carry on any business or the payment is just equivalent of the cost incurred by the assessee, but excess accrues due to fortuitous circumstances or is a windfall, then the accrual may be a receipt, but it would not be income arising from business, and, therefore, not taxable under the Act." It may also be pertinent to mention that under section 10(3) any receipt of casual nature not arising from business was exempt from taxation. Now even such receipts which are of casual and non-recurring nature are liable to tax in excess of Rs. 5,000, even when such receipts are not in the course of business.

26. In the case of *CIT v. G. R. Karthikeyan* [1993] 201 ITR 866/68 Taxman 145 (SC), their lordships of the Supreme Court held that receipt not falling within the ambit of any specific clause may yet be income.

Their Lordships further held that the definition of 'income' in section 2(24) was inclusive, the purpose of the definition was not to limit the meaning of 'income' but to widen its net, and the several clauses therein were not exhaustive of the meaning of income; even if a receipt did not fall within the ambit of any of those clauses, it might still be income if it partook of the nature of income.

27. In the case of CIT v. T. V. Sundaram Iyengar & Sons Ltd. [1996] 222 ITR 344/88 Taxman 429 (SC), their Lordships of the Supreme Court held that in the present case the money was received by the assessee in the course of carrying on its business and therefore the same was liable to tax.

28. Considering the facts and circumstances of the case in the light of the principles of law laid down by the Apex Court, we are of the considered view that the amount received by the assessee from the insurance company for compensating the expenses of revenue nature was a receipt of revenue nature and the surplus was liable to tax as income of the assessee.

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