

Escorts Electronics Ltd. Vs. Commissioner of Income-tax (Central)-i

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Court : Delhi

Decided On : Sep-11-2002

Reported in : (2002)178CTR(Del)21

Judge : D.K. Jain and; Sharda Aggarwal, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 14, 56 and 256(1)

Appeal No. : ITR No. 505/1992

Appellant : Escorts Electronics Ltd.

Respondent : Commissioner of Income-tax (Central)-i

Advocate for Def. : R.D. Jolly, Sr. Standing Counsel

Advocate for Pet/Ap. : Santosh K. Aggarwal, Adv

Judgement :

D.K. Jain, J.

1. At the instance of the assessed, the income-tax Appellate Tribunal, Delhi Bench 'E', Delhi (for short, 'the Tribunal') has referred the following questions under Section 256(1) of the Income-tax Act, 1961 (for short, 'the Act'), for our opinion:

'1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that unabsorbed depreciation of an earlier year could not be

allowed to be set off against the income taxed under Section 56 (sic) of the Income-tax Act, 1961?

2. Whether on the facts and in the circumstances of the case the Tribunal was right in upholding the allowance of only 10% of the total expenditure incurred by the assessed as expenditure for earning the income that was the subject matter of tax?'

2. The assessed company, initially incorporated as a public limited company under the name and style of 'CGR India Limited', was engaged in the business of manufacturing and assembling X-ray equipments. However, its business activity stopped from 1 January 1981 as the foreign collaborator had withdrawn from the company. The name of the company was thereafter changed to M/s. Escorts Electronics Limited. For the assessment year 1982-83, for which the previous year ended on 31 December 1981, the assessed filed its return declaring a loss of Rs. 11,76,539/-. While computing total income for the said assessment year, the Assessing Officer held that since the business of the assessed had ceased to exist, the entire income was to be assessed under the head 'income from other sources' and not under the head 'Profits and gains of business'. He, accordingly, assessed the receipts on account of sale of drawings and industrial files (Rs. 12,48,000/-); profit on sale of other assets (Rs. 31,286/-) and other receipts (Rs. 83,374/-) under the head 'income from other sources'. The entire expenditure of Rs. 25,48,083/- incurred by the assessed during the previous year was also disallowed and only a sum of Rs. 1,36,266/-, being 10% of the total aforementioned receipts, was allowed as deduction. The depreciation for the current year and unabsorbed depreciation for earlier years was also disallowed. Thus, the total income for the year was assessed at Rs. 12,26,394/-.

3. Being aggrieved, the assessed preferred an appeal to the Commissioner of Income-tax (Appeals), who affirmed the view of the Assessing Officer that the income for the year was to be assessed under the head 'income from other sources'. However, relying on the decision of the Bombay High Court in Commissioner of Income-tax Bombay City II v. Estate and Finance Limited : [1978]111ITR119(Bom) , the Commissioner allowed set off of the carry forward

unabsorbed depreciation of earlier years against the income computed under the head 'income from other sources'. The assessable income was thus reduced to nil.

4. The assessed as well as the Revenue, being aggrieved of the order of Commissioner of Income-tax (Appeals) took the matter in further appeals to the Tribunal. The Tribunal dismissed the appeal of the assessed regarding disallowance of the expenses but allowed the appeal filed by the Revenue, holding that the depreciation brought forward from earlier years could not be set off against income from other sources.

5. On assessed's moving an application under Section 256(1) of the Act, the afore-noted questions, as corrected, have been referred.

6. We have heard Mr. Santosh K. Aggarwal, learned counsel for the assessed and Mr. R.D. Jolly, senior Standing Counsel for the Revenue. Since, in our opinion, the issue, subject matter of the first question, stands answered by the Supreme Court in CIT v. Virmani Industries Private Limited : [1995]216ITR607(SC) , we deem it unnecessary to dwell on the question in greater detail. In Virmani Industries' case (supra) the assessed was engaged in the manufacture of soap and oil during the previous year relevant to the assessment year 1956-57. The business was stopped in that year, where after the factory was let out on hire. Ten years later i.e. in the previous year relating to the year 1965-66, the assessed started the business of manufacture of steel pipes. For the purpose of this business, a part of the old machinery used in the manufacture of soap and oil was utilised. In the assessment proceedings relating to the assessment year 1965-66, the assessed claimed that unabsorbed depreciation, to the extent it pertained to the old machinery utilised in the new business, should be brought forward and set off against the profits of the new business. The claim was rejected by the Income-tax Officer and by the Appellate Assistant Commissioner. The Tribunal, however, upheld the assessed's claim. The view of the Tribunal was affirmed by the High Court. Upholding the decision of the High Court, the Apex Court held that if after setting off the unabsorbed depreciation allowance relating to the assessment year 1956-57 against the income for the following assessment years, any depreciation allowance still remained unabsorbed, it could be set off against the income for the

accounting period relevant to the assessment year 1965-66. For coming to the said conclusion, the Supreme Court relied on its earlier two decisions in Commissioner of Income-tax, Calcutta v. Jaipuria China Clay Mines (P) Ltd. : [1966]59ITR555(SC) and Rajapalayam Mills Ltd. v. Commissioner of Income-tax, Madras : [1978]115ITR777(SC) , wherein it was observed that the unabsorbed depreciation was not only to be set off against other heads of income in the relevant previous year but where it is carried forward, it 'stands exactly on the same footing as the current depreciation'. Thus, reiterating the view expressed in the afore-noted decisions, in Virmani Industries' case (supra), the Apex Court has held that though on the first impression the expression 'profits or gains chargeable' appear to refer only to profits or gains of business or profession chargeable under Section 28 but in view of the said decisions, the said expression is not so confined and it refers to income from all the heads of income specified in Section 14 of the Act, which includes 'income from other sources'.

7. In view of the said authoritative pronouncement, we are of the opinion that the Tribunal was not right in holding that the unabsorbed depreciation carried forward from earlier years could not be allowed against the income assessed under Section 56 of the Act under the head 'income from other sources'. Consequently, the first question is answered in the negative i.e. in favor of the assessed and against the Revenue.

8. As regards the second question, Mr. Aggarwal, learned counsel for the assessed submits that the assessed, at whose instance, the reference has been made, is not interested in getting an answer from this court on the question. Accordingly, the second question is returned unanswered.

The reference stands disposed of in the above terms with no order as to costs.

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