

Jay Engg. Works Ltd. Vs. Cit

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Court : Delhi

Decided On : Mar-06-2003

Reported in : [2003]132TAXMAN69(Delhi)

Appeal No. : IT Reference No. 323 of 1983 6 March 2003

Appellant : Jay Engg. Works Ltd.

Respondent : Cit

Advocate for Pet/Ap. : S.K. Aggarwal, for the assessed; Sanjeev Khanna, for the Revenue

Judgement :

D.K. Jain, J.

At the instance of the assessed, the Income Tax Appellate Tribunal, New Delhi (hereinafter referred to as 'the Tribunal'), has referred under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the following questions for our opinion :

'1. Whether, on the facts and in the circumstances of the case, in sum of Rs. 1,00,332 on account of difference in foreign exchange rate is allowable as a revenue expenditure ?

2. Whether, on the facts and in the circumstances of the case, the assessed is entitled to extra shift allowance amounting to Rs. 84,273 in respect of its Calcutta Factory ?

3. Whether, on the facts and in the circumstances of the case, the assessed is entitled to claim weighted deduction in respect of :

(i) Certificate of original fee;

(ii) Stamp on Export Bills;

(iii) Freight charges;

(iv) Insurance charges;

(v) Clearing Agent Commission/Port charges;

(vi) Inspection charges;

(vii) Octroi;

(viii) Service charges (payment to Shopping Agents);

(ix) Port Charges;

(x) Collie charges.'

2. The reference relates to the assessment year 1976-77 and arises out of ITA No. 3885/Delhi of 1980. The assessed is a public limited company, engaged in the manufacture of fans, sewing machines, electric motors etc. During the course of assessment proceedings for the relevant assessment year, it was noticed by the assessing officer that the assessed had made a claim of Rs. 1,00,332 on account of difference in foreign exchange. The assessed had debited the said amount as representing difference in foreign exchange paid to ICICI & IFC on Installments, on loans received from the said financial institutions for import of capital goods. The claim was disallowed by the assessing officer in view of the provisions contained in section 43A of the Act. The said amount was, thus, treated as capital expenditure, on which depreciation was allowed. The Commissioner (Appeals) as

also the Tribunal upheld the view taken by the assessing officer.

3. The next issue relates to the claim for extra shift allowance made by the assessed in respect of its Calcutta factory. The controversy was whether the assessed was entitled to claim extra shift allowance in respect of its whole unit at Calcutta or the same was to be confined only to those machines or plants which had worked on triple shift. Laying stress on the word 'concern' occurring in the rules relating to grant of depreciation allowance under the Income Tax Rules, 1962, the stand of the assessed was that for the purpose of extra shift allowance, it is sufficient if any one unit of the Calcutta factory had worked on extra shift. The stand of the assessed did not find favor with both the Appellate Authorities.

4. The third subject issue relates to the claim of the assessed for weighted deduction under section 35B of the Act in respect of certain expenses noted in paragraph 3 of the statement of the case.

5. We have heard Mr. S.K. Aggarwal, learned counsel for the assessed, and Mr. Sanjeev Khanna, learned senior standing counsel for the revenue.

6. Since, in our opinion, answers to all the three questions stand concluded by the decisions of this court and the Supreme Court, we deem it unnecessary to dilate on the afore-noted issues afresh. Insofar as the first question is concerned, a similar issue came up for consideration of this court in Jain Tube Co. Ltd. v. CIT : [2002]254ITR570(Delhi) , wherein, while relying on the decision of the Apex Court in Sulej Cotton Mills Ltd. v. CIT : [1979]116ITR1(SC) , it was held that difference in exchange was a capital expenditure within the meaning of section 43A of the Act and was, therefore, not allowable as revenue expenditure under section 28 read with section 37 of the Act. In view of the said decision, the first question is answered in the negative, i.e., in favor of the revenue and against the assessed.

7. Insofar as the second question is concerned, an identical issue was considered by the Apex Court in South India Viscose Ltd. v. CIT : [1997]227ITR286(SC) , wherein while taking note of various circulars issued by the Central Board of Direct Taxes, the Supreme Court was pleased to hold that extra shift allowance has to be calculated on the basis of the number of days during which the concerned plant

worked double shift or triple shift and the said allowance is not required to be calculated on the basis of the number of days a particular item of machinery or plant had worked double shift or triple shift. Since in the present case, it is not in dispute that some machinery, belonging to the assessed concern, had worked on extra shift, the assessed was entitled to claim extra shift allowance in terms of the relevant rules. Thus, in the light of the decision of the Apex Court, the assessed is entitled to extra shift allowance. Consequently, the second question is answered in the affirmative, i.e., in favor of the assessed and against the revenue.

8. Regarding third question, the issue raised is again concluded by various decisions of the Apex Court. In CIT v. Hero Cycles (P) Ltd. : [1997]228ITR463(SC) , their Lordships of the Supreme Court have held that weighted deduction in respect of expenses incurred can be allowed under section 35B of the Act only if they are wholly and exclusively incurred for any of the purposes mentioned in the sub-clauses of section 35B(1)(b). It has also been held that for the purpose of claiming weighted deduction, the onus lies on the assessed to prove that the expenditure on which weighted deduction is claimed falls in any of the said sub-clauses. Unless that is done, the assessed is not entitled to weighted deduction under the said Section.

9. Having perused the nature of the expenses on which weighted deduction has been claimed by the assessed, we are of the view that none of the said expenditure fall within the ambit of any of the sub-clauses of section 35B(1)(b) of the Act. In that view of the matter, the third question is also answered in the negative, i.e., in favor of the revenue and against the assessed.

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

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