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Court : Delhi

Decided On : Oct-01-2001

Reported in : [2002]120TAXMAN593(Delhi)

Appeal No. : Surtax Reference Nos. 1 to 4 of 1992 1 October 2001

Appellant : Cit

Respondent : Sharpedge Ltd.

Advocate for Pet/Ap. : Sanjeev Khanna and; Ajay Jha, for the Revenu

Judgement :

Arijit Pasayat, C.J.

These four references involve identical issues and are, thereforee, taken up for disposal together. At the instance of the revenue, following question has been referred for opinion pursuant to the direction of this court under section 18 of the Companies (Profits) Surtax Act, 1964 (hereinafter referred to as the Surtax Act), read with section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act), by the Tribunal, Delhi Bench 'B' :

'Whether the Income Tax Appellate Tribunal was correct in law and on facts in holding that the amount of development rebate reserve written back to the general reserve was to be considered as forming part of the capital base of the company for computing its capital under the Second Schedule to the Companies (Profits)

Surtax Act, 1964 ?'

The dispute relates to the assessment years 1976-77 to 1979-80.

2. The assessed, a public limited company, had written back several amounts of development rebate reserve to general reserve within the accounting periods involved. It was claimed that for computing the capital employed as per Second Schedule to the Surtax Act, the said amounts were to be treated as forming part of its capital. This claim was negatived by the assessing officer. In appeal, the Commissioner (Appeals) upheld the conclusions of the assessing officer. The assessed preferred second appeal before the Tribunal. The assessed's claim was accepted by the Tribunal with the following findings :

'As regards development rebate reserve written back, till such time it was not written back, it was being taken in computation as capital of the assessed-company for the purposes of surtax under the Second Schedule under the enactment referred to above, but simply because it has been written back it does not lose its that character as a result thereof. The Supreme Court of India in the case of CIT v. Elgin Mills Ltd. : [1986]161ITR733(SC) , has laid down the law that :

'The distinction between 'provision' and 'reserve' is that while 'provision' is a charge on profits which are taken into account in the gross receipt of the profit and loss account, 'reserve' is an appropriation of profit to provide for the asset which is represented.'

The development rebate reserve, in no way, is a part of profits which are taken into account in the gross receipts of the profits and loss account in relation to assessment years under appeal and accordingly it cannot be said to be a 'provision' but remains 'reserve'. It has, as such, to be taken in computation as the capital of the assessed-company for the purposes of the Surtax Act. We hold and direct accordingly.'

3. Though, a prayer for reference in terms of section 18, read with section 256(1) was turned down, subsequently pursuant to the directions given by this court, the question as set out above has been referred for opinion of this court.

4. We have heard the learned counsel for the revenue. There is no appearance on behalf of the assessed in spite of notice. With reference to rule 1(iii) of the Second Schedule, it is submitted that the Tribunal's view was incorrect.

5. A similar question came up before the Andhra Pradesh High Court in CIT v. K.C.P. Ltd. : [1985]151ITR455(AP) . The main question which was referred at the instance of the assessed in that case was as follows :

'2.Whether, on the facts and in the circumstances of the case, the development rebate reserve transferred to the general reserve at the end of the statutory period is to be excluded from 'other reserves' under rule 1 (iii) of the Second Schedule to the Companies (Profits) Surtax Act, 1964, for the purpose of computation of capital base ?'

The court, after analysing the factual position, came to hold as follows :

'In the result, we answer the second question referred to us at the instance of the assessed to the effect that the development rebate reserve transferred to the profit and loss account for each of the three assessment years is not liable to be excluded in the computation of capital under rule 1 (iii) of the Second Schedule to the Surtax Act, and at the same time whatever sums were drawn for the purpose of declaring dividends from out of the general reserve accounts, affecting the credit balance on the opening day of the accounting year for each of the three assessment years should be reduced in computing the capital under rule 1(iii) of the Second Schedule to the Surtax Act.'

We are in agreement with the analysis made and views succinctly expressed as referred in the quoted portion above. The question, thereforee, is answered in the negative, in favor of the revenue and against the assessed.

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