

Cit Vs. Continental Device India

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Court : Delhi

Decided On : May-04-2001

Reported in : (2002)177CTR(Del)212

Appeal No. : IT Ref. No. 339 of 1982 4 May 2001 A.Y. 1978-79

Appellant : Cit

Respondent : Continental Device India

Advocate for Pet/Ap. : R.C. Pandey and; Ms. Prem Lata Bansal, for the Revenue; Sat

Judgement :

Arijit Pasayat, C.J.

At the instance of the revenue, the following question has been referred for opinion of this court under section 256(1) of the Income Tax Act 1961 (hereinafter referred to as 'the Act') by the Tribunal, Delhi Bench 'D' :

'Whether, on the facts and in the circumstances of the case, the Tribunal was right in confirming order of the Commissioner (Appeals) to give rebate in the tax payable to the extent of Rs. 67,785 for the amount deposited in IDBI in lieu. of surcharge in accordance with the provisions of section 2(6) and (8) of the Finance Act, 1976 although for assessment year 1978-79 tax was to be paid in accordance with the provisions of the Finance Act, 1978, which did not provide for such

concession?'

Dispute, as the question itself indicates, relates to the assessment year 1978-79.

2. Factual position, which is almost undisputed, is essentially as follows :

For the assessment year in question previous year ended on 30-6-1977. The assessed, a company, was assessed under section 143(3) read with section 144B of the Act. For the assessment year as question the assessed filed its return covering a period of 18 months since the assessed was allowed to change the previous year by the Income Tax Officer by order dated 7-4-1977. The assessed deposited a sum of Rs. 82,500 with Industrial Development Bank of India (hereinafter referred to as the 'IDBI') in lieu of surcharge on income-tax in terms of section 2(6) and (8) of the Finance Act, 1976 (hereinafter referred to as the 'Finance Act') read with Company's Deposit (Surcharge on Income Tax) Scheme, 1976 (hereinafter referred to as the Scheme') dated 28-8-1976. The assessed made the deposit on 13-12-1976. The Income Tax Officer did not allow the claimed credit to the assessed. Matter was carried in appeal before the Commissioner (Appeals). The authority held that under the provisions of the Finance Act and the Scheme in a case where the amount of deposit so made is equal to or exceeded the amount of surcharge on income-tax, then the surcharge on income-tax payable by the company, for the relevant assessment year shall be nil.

In the assessed's case, the gross demand as surcharge was Rs. 67,787 as against which deposit of Rs. 82,500 was made. The Income Tax Officer was, therefore, directed to treat the demand on surcharge as nil. Against the relief granted the revenue filed an appeal before the Tribunal. The Tribunal noticed that the accounting period relevant to the assessment year under appeal was comprised of 18 months and the assessed was allowed to change the previous year. Period comprised in the accounting period relevant to the assessment year, thus, worked out as 1-1-1976 to 30-6-1977. Undisputedly, the assessed had deposited Rs. 82,500 with IDBI in lieu of surcharge in terms of the provisions referred to above. As the accounting period comprised of 18 months and change in the previous year was permitted, there was no assessment for the assessment

year 1977-78. Accordingly, the assessed had claimed relief as credit under the Scheme. The being the position, it was held that the assessed's claim was allowable. On being moved for reference, question as stated above was referred for opinion of this court.

3. We have heard the learned counsel for the parties. Stand of the learned counsel for the revenue was that claim was not allowable on the facts. On the other hand, the learned counsel for the assessed submitted that the Scheme was clearly applicable.

4. In order to appreciate the correct position, it would be necessary to deal with the relevant clauses. Clause (3) of the scheme reads as follows :

'3. Deposit when to be made.(1) A deposit in lieu of payment of surcharge on income-tax under sub-section (6) of section 2 of the Finance Act, 1976 (66 of 1976), may be made by a company at any time before the last Installment of advance tax is due in its case.

(2) A deposit in lieu of payment of surcharge on income-tax under sub-section (8) of section 2 of the Finance Act, 1976 (66 of 1976), may be made by a company at any time during the financial year commencing on the 1-4-1976.

(3) A deposit under sub-para. (1) or sub-para. (2) may be made either in one lump sum or in two or more Installments.'

5. A bare reading of the provisions makes it clear that the deposit in lieu of payment of surcharge on income-tax under sub-section (6) of section 2 of the Finance Act, is to be made by a company or assessed at any time before the last Installment of advance tax is due in its case and under sub-section (8) of section 2 of the Finance Act, the deposit is to be made by the company or the assessed at any time during the financial year commencing on 1-4-1976. Undisputedly, the assessed made the deposit on 13-12-1976, i.e., before the last Installment of advance tax in its case was payable. The deposit had already been made in the financial year commencing on 1-4-1976. In views of the undisputed position that the Income Tax Officer had permitted change of previous year and the period

covered was 18 months and since there was no assessment for the year 1977-78, the income of the assessed, which could be the subject-matter of the assessment for the said assessment year, was subjected to assessment and charge during 1978-79. In that view of the matter, the assessed was entitled to claim relief in lieu of surcharge payable. View of the Commissioner (Appeals) as affirmed by the Tribunal cannot be faulted with. The question, therefore, is answered in the affirmative in favor of the assessed and against the revenue.

The reference is disposed of accordingly.

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