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Court : Income Tax Appellate Tribunal ITAT Hyderabad

Decided On : Jan-31-2006

Judge : D Manmohan, J S Reddy

Appellant : Joint Cit

Respondent : Lamtuff Plastics Ltd.

Judgement :

1. This is an appeal filed by the revenue, directed against the order of the CIT (Appeals)-V (Cent.), Hyderabad, dated 30-11-2000, for the assessment year 1997-98.

3. Ground Nos. 2 and 3 are against the finding of the first appellate authority that the provisions of Section 80HHC(4) are only directory in nature and that as the certificate was filed during the course of assessment proceedings, the claim under Section 80HHC could not be denied on that score. The learned departmental representative relied on the judgment of the Hon'ble Punjab & Haryana High Court in the case of CIT v. Jaideep Industries (1989) 180 ITR 811. The assessee relied upon the decision of the Hon'ble jurisdictional High Court in the case of CIT v. Hernsons Industries as well as the decision of the Hon'ble Calcutta High Court in the case of Murali Export House v.CIT .

4. After hearing rival submissions, we are of the considered opinion that the issue is covered in favour of the assessee and against the revenue by the decision of the Hon'ble jurisdictional High Court in the case of Hemsons Industries (supra).

Full Bench of the Hon'ble Punjab & Haryana High Court in the case of CIT v. Punjab Financial Corporation (2002) 254 ITR 61, has taken a similar view. Respectfully following the same, we uphold the order of the first appellate authority.

5. Ground No. 4 is against the finding of the first appellate authority that the bonus payment of Rs. 41,084 has to be allowed as deduction.

The assessee had made a provision of Rs. 4,78,064 in its books of account against which it made a payment of Rs. 5,19,148. The assessing officer, on the ground that the assessee had not debited the amount of Rs. 41,084 in its books, disallowed the claim. The first appellate authority relied on the decision of the Hon'ble Supreme Court in the case of Kedarnath Jute Mfg. Co. Ltd. v. CIT and allowed the claim of the assessee by holding that Section 43B is applicable and that irrespective of the method of accounting followed by the assessee, the deduction in respect of certain liabilities including payment of bonus to its employees is dictated by its provisions.

6. After hearing both sides, we uphold the finding of the first appellate authority for the detailed reasons given by him. It is well-settled that entries in the books do not govern the allowability or otherwise of an expenditure. This ground of the revenue is, therefore, dismissed.

7. Ground Nos. 6 to 9 are against the finding of the first appellate authority on the issue of disallowance of Rs. 6,39,720 being excise duty payment, under Section 43B of the Act. The assessing officer, while admitting that this amount was paid by the assessee and thus was entitled to deduction under Section 43B, had given a finding that such payment would form part of closing stock of goods. He relied on the decision of the Tribunal in the case of Bakelite Hylam Ltd. (I.T.A. No.429 (Hyd.) of 1988, dated 30-3-1994). The first appellate authority relied on the judgment of the Hon'ble Gujarat High Court in the case of Lakhanpal National Ltd. v. Income Tax Officer , CIT v.Cadila Chemicals (P.) Ltd.Garden Silk Mills (P.) Ltd v. Dy. CIT and upheld the contention of the assessee. He also relied on two Special Bench decisions of the Tribunal, Delhi, in the cases of Indian Communication Network (P.) Ltd. v. Inspecting Assistant Commissioner (1994) 49

ITD 56 and Income Tax Officer v. Food Specialities Ltd. (1994) 49 ITD 21 (Delhi) (SB).

8. The learned departmental representative placed reliance on the decision of the Special Bench of the Tribunal in the case of Dy. CIT v.CWC Wines (P.) Ltd. (2004) 89 ITD 1 (Hyd.). The learned Counsel for the assessee submits that the order in the case of CWC Wines (P.) Ltd. (supra) is concerned with certain payments which were made though not actually due. He distinguished this decision by submitting that the Special Bench was considering pre-paid expenses and not expenditure of the nature incurred by the assessee which was actually due. Further, he relied on the decision of the Hon'ble Supreme Court in the case of Berger Paints India Ltd v. CIT (2004) 266 ITR 991, and submitted that the decision of the Hon'ble Gujarat High Court in the case of Lakhanpal National Ltd. (supra) was upheld.9. After hearing rival contentions, we are of the considered opinion that the issue is covered in favour of the assessee and against the revenue by the decision of the Hon'ble Supreme Court in the case of Berger Paints India Ltd. (supra). The decision of Special Bench of the Tribunal referred to above is not applicable to the facts of the case inasmuch as that case was dealing with situation where certain amounts had to be paid in advance, that is, even before the purchase of the goods. In the case on hand, the expenditure in question was paid only after it became due. For these reasons, we uphold the order of the first appellate authority and dismiss this ground of the revenue.