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Court : Gujarat

Decided On : Feb-06-2002

Reported in : [2002]122TAXMAN743(Guj)

Appeal No. : IT Reference No. 170 of 1986 6 February 2002

Appellant : Synbiotics Ltd.

Respondent : Cit

Advocate for Pet/Ap. : R.K. Patel, *for the Assessee* B.B. Nalk, *for the Revenue*

Judgement :

K.A. Pui, J.

The Tribunal, Ahmedabad Bench A, has referred the following questions for the opinion of this court :

'1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount of Rs. 50,345 paid as guarantee commission was on capital account and disallowable as such ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that an amount of Rs. 20,924 in respect of exchange loss was disallowable as capital expenditure ?

3. Whether the Tribunal was justified in law in confirming the levy of interest under section 215 of the Income Tax Act, 1961 ?'

2. The revenue has also preferred reference application against the order of the Tribunal and at the instance of the revenue, following question was referred to this court for our opinion :

'Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that charging of interest tinder section 216 of the Income Tax Act, 1961, was not justified ?'

3. As far as question No. 1 is concerned, the Tribunal, vide-its order dated 3-3-1986 has confirmed the disallowance of guarantee commission of Rs. 50,345. While confirming the said disallowance, the Tribunal has followed the decision of this court in the case of CIT v. Vallabh Glass Works Ltd. (1982) 137 ITR 389. At the time of hearing of this reference, it was pointed out by the learned counsel appearing for the assessee that a similar question arose before this court in the case of Ambica Mills Ltd. v. CIT 0065/1998 : [1999]235ITR264(Guj) wherein following the Supreme Court's decision in the case of Addl. CIT v. Akkamamba Textiles Ltd. : [1997]227ITR464(SC) , which was reiterated in the case of CIT v. Siwakami Mills Ltd. : [1997]227ITR465(SC) , the Supreme Court has taken the view that guarantee commission paid in such cases was a revenue expenditure. In view of the pronouncement of the Supreme Court in the abovereferred cases as well as having regard to the view taken by this court in the latter decision of Ambica Mills Ltd.'s case (supra), the reliance placed by the Tribunal on the decision of Vallabh Glass Works Ltd.'s case (supra) is not held to be justified. We, therefore, reverse the decision of the Tribunal on this point and hold that the expenditure of Rs. 50,345 incurred on account of guarantee commission is revenue expenditure. We, accordingly, answer the question No. 1 in the negative, in favour of the assessee arid against the revenue.

4. As far as the question No. 2 is concerned, the Tribunal has relied on the decision in the assessee's own case for the assessment year 1977-78 and disallowed the claim of the assessee to the extent of Rs. 26,924 in respect of exchange loss. This issue is squarely covered by the decision of the Supreme

Court in the case of CIT v. Tata Iron & Steel Co. Ltd. : [1998]231ITR285(SC) , wherein it is held that at the time of repayment of loan, there was a fluctuation in the rate of foreign exchange as a result of which, the assessee had to repay a much lesser amount than he would have otherwise paid. It was further held that this was not a factor which could alter the cost incurred by the assessee for purchase of the asset. The assessee might have raised the funds to purchase the asset by borrowing but what the assessee had paid for it, was the price of the asset. That price could not change by any event subsequent to the acquisition of the asset. The manner or mode of repayment of the loan had nothing to do with the cost of an asset acquired by the assessee for the purpose of his business. Following this decision, we hold that the assessee is not entitled to claim the exchange loss of Rs. 26,924 as revenue expenditure. Accordingly, the question No. 2 is answered in the affirmative, in favour of the revenue and against the assessee.

5. So far as the question No. 3 is concerned, following the decision taken by this court in IT Reference No. 75 of 1987, rendered today, we hold that the interest under section 215 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act) was rightly charged by the Income Tax Officer and that the Tribunal was justified in confirming levy of interest under section 215. We, accordingly, answer this question in the affirmative in favour of the revenue and against the assessee.

6. This brings us to the question referred at the instance of the revenue. The issue is with regard to the chargeability of interest under section 216 of the Act. The Income Tax Officer had not given any reason whatsoever for levy of interest under section 216 nor he had recorded the requisite finding as contemplated by clause (a) of section 216. The similar issue came up before this court in Shree Digviiay Woollen Mills Ltd. v. CIT : [1993]204ITR398(Guj) , wherein, after considering the relevant case law on the subject, this court has held :

'... that, so far as the facts of this case were concerned, it was not in dispute that the Income Tax Officer not only did not give any reasons for levying interest under section 216 but had also not recorded the requisite finding contemplated by clause (a) of section 216. The assessee did make a grievance before the Appellate

Assistant Commissioner in this behalf. The Appellate Assistant Commissioner held that the interest was correctly chargeable. The prayer for setting aside the order of the Income Tax Officer was very much implicit in the grievance made by the assessee before the Appellate Assistant Commissioner. The Tribunal was not right in holding that the Income Tax Officer was justified in giving a direction to the assessee to pay interest under section 216. The Tribunal ought to have set aside the order of the Income Tax Officer as confirmed by the Appellate Assistant Commissioner and ought to have remanded the matter to the Income Tax Officer for passing afresh order as contemplated by section 216.'

We, accordingly, hold that the Tribunal ought to have set aside the order of the Income Tax Officer, as confirmed by the Commissioner, and ought to have remanded the matter to the Income Tax Officer for passing a fresh order as contemplated by section 216. For this reason, we answer this question in the negative, that is, in favour of the assessee and against the revenue.

7. Having regard to the facts and circumstances of the case, there shall be no order as to costs.