

Cit Vs. Anjani Kumar Co. Ltd.

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Court : Rajasthan

Decided On : Jul-15-2002

Reported in : [2002]124TAXMAN429(Raj)

Appeal No. : D.B. IT Reference No. 21 of 1986 15 July 2002

Appellant : Cit

Respondent : Anjani Kumar Co. Ltd.

Advocate for Pet/Ap. : Anuroop Singhi, *for the Revenue*

Judgement :

ORDER

On an application filed under section 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following question for our opinion :

'Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in allowing the assessee's claim for writing-off of the sum of Rs. 52,489 and litigation expenses at Rs. 12,000?'

2. During the assessment year 1979-80, the assessing officer noticed that a sum of Rs. 52,489 was written off on account of advance made to the agriculturist for purchase of agriculture land. The intention of the assessee of course was to acquire the land to set-up a boiler factory, but ultimately that was not materialized. The agriculturist refused to refund the amount. The assessee filed a civil suit in the

Court, where the assessee lost its claim. Then the assessee wrote off that amount in books of account and claimed deduction on the incurred amount as revenue loss. The assessing officer rejected his claim. According to the assessing officer, when the amount was advanced for acquiring the capital asset, the written off amount cannot be allowed as deduction in the income of the assessee.

3. In appeal before the Commissioner, the Commissioner (Appeals) also confirmed the view taken by the assessing officer.

4. In appeal before the Tribunal, the Tribunal allowed the claim of the assessee. In para 6 of its order, the Tribunal observed as under :

'After carefully considering all the facts and circumstances of the case, we are inclined to uphold the assessee's contention. So far as the identity of the business is concerned, it is not the nature of the item manufactured but the test for the identity of the business is that there should be a single trading and profit and loss account and the transaction as well as the business should have been done by a common organisation. In these circumstances, the assessee would be entitled to the unabsorbed loss in the shape of shares against the income. This was so held by the Hon'ble Supreme Court in *Standard Refinery & Distillery Ltd. v. CIT* : [1971]79ITR589(SC) and again in *Produce Exchange Corporation Ltd. v. CIT* : [1970]77ITR739(SC) . So far as the authorities relied upon by the revenue are concerned, in all these cases, the criteria adopted by the court was that since the expenditure incurred brought into existence a benefit of enduring nature, it can be treated as capital nature, meaning thereby that depreciation can be claimed upon the total expenditure for setting up the new project. But in the present case, the new project has never matured. The expenditure incurred by the assessee has, therefore, to be written off. The efforts to make a new project by the same management in relation to the same business would certainly come within the test of identity laid down by the Hon'ble Supreme Court in the two authorities cited aforesaid and since no benefit of enduring nature resulted to the assessee, the expenditure in question cannot be treated to be of capital nature.'

5. The admitted facts are that the advance was paid for acquiring the agricultural land to set-up a factory, but when the agricultural land was not acquired, no capital

asset came into existence, therefore, there is no question of allowing depreciation on such asset. If any asset is acquired and if it is a benefit of enduring nature, then of course the assessee cannot get the deduction of amount for acquisition of land as revenue expenditure. When land was not acquired, no capital asset has been acquired, therefore, the payment of Rs. 50,489 is to be allowed as business loss.

6. We agree with the view taken by the Tribunal. No interference is called for.

7. In the result, we answer the question in affirmative, i.e., in favour of the assessee and against the revenue.

8. Reference so made stands disposed of accordingly.

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