

Dy. Cit Vs. Asher Textiles Ltd.

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Court : Chennai

Decided On : Nov-13-2001

Reported in : (2001)73TTJ(Mad)727

Appeal No. : ITA No. 2267/Mds/1993 13 November 2001 A.Y. 1990-91

Appellant : Dy. Cit

Respondent : Asher Textiles Ltd.

Advocate for Pet/Ap. : R. Venkataraman, *for the Revenue* K. Ravi, *for the Assessee*

Judgement :

ORDER

I.S. Verma, J.M.

In this appeal the revenue has objected to the order of the Commissioner (Appeals) dated 30-6-1993, by way of following grounds :

'1. The learned Commissioner (Appeals) erred in deleting the addition made under section 43B on the ground that the amount has been paid on 18-4-1990. As per the Calcutta High Court decision in CIT v. Edcons (India) (P) Ltd. : [1992]198ITR86(Cal) the provident fund contribution has to be paid within 15 days from the last date of the month. Hence addition made under section 42B is in order.

2. The learned Commissioner (Appeals) erred in directing to reduce the excess depreciation added back amounting to Rs. 31,69,163 for the purpose of section 115J. As per the provisions of Companies Act, the depreciation has to be worked out only on the pro rata basis. If this is done, depreciation will be less by Rs. 31,69,163.

3. The learned Commissioner (Appeals) erred in directing to exclude excise duty and sales-tax from the turnover for the purpose of section 80HHC. These clearly form part of the turnover as per the Supreme Court's decision in CIT v. T Naggi Reddy : [1993]202ITR253(SC) .

We have heard the learned Departmental Representative as well as the counsel appearing for the respondent-assessee.

2. So far as Ground No. 1 is concerned, the learned Departmental Representative has supported the order of the assessing officer by relying on the decision of the Hon'ble Calcutta High Court in the case of CIT v. Edcons (India) (P) Ltd. (supra), wherein the Hon'ble High Court, while considering the allowability of contribution to provident fund, had observed that the provident fund contribution has to be paid within 15 days from the last day of the month, and, therefore, the assessee could not, by not making the payment and showing it as a liability, get the benefit of deduction in case of the provident fund. The Hon'ble High Court further held that the principles governing the cases of sales-tax dues will apply to the case of provident fund contribution in respect of the last month of the accounting year and not for any other month.

The counsel for the assessee, however, in addition to supporting the order of the Commissioner (Appeals), submitted that in view of the decision of the Tribunal, Bangalore Bench in the case of Hansur Plywood Works Ltd. v. Dy. CIT , the contribution towards provident fund, E.P.F., E.S.I., if paid within the grace period allowed under the relevant Act, have to be considered as having paid within the prescribed period allowed under the relevant Act, and, therefore, the Commissioner (Appeals) was justified in deleting the disallowance. Coming to the disallowance of provident fund administrative charges, the counsel submitted that the provisions of section 43B speaks of contribution to the provident fund and not

provident fund administrative charges and, therefore, the assessee's claim was not disallowable under the provisions of section 43B of the Act, as has been held in the aforesaid decision of the Tribunal.

3. After careful consideration of the facts and circumstances of the case, rival submissions and the decisions relied upon by the parties, we are of the opinion that the decision relied upon by the learned Departmental Representative, instead of supporting the revenue's case, supports the assessee's case because, the contribution towards provident fund, etc. in respect of last month of the accounting year could be paid by the 15th of the next month and at the same time the Tribunal Bangalore Bench in the case of Hansur Plywood Works Ltd. (supra) having held that the contributions made within the grace period are deemed to have been paid within the period allowed under the relevant Act, we do not see any reason to interfere with the order of the Commissioner (Appeals). Similarly, we do not see any reason to interfere with the order of the Commissioner (Appeals) on the point of deletion of addition having made by disallowing provident fund administrative charges. Revenue's this ground fails.

4. In ground No. 2 the revenue has objected to the order of the Commissioner (Appeals) whereby he had directed the assessing officer to reduce the excess depreciation of Rs. 31,69,163 added by the assessing officer while computing book profit for the purpose of section 115J of the Income Tax Act, 1961.

5. The learned Departmental Representative, after relying on the decision of the Hon'ble Madhya Pradesh High Court in the case of CIT v. Vandana Rolling Mills Ltd. : [1998]234ITR693(MP) , submitted that the assessee had no power to tringle with the profit arrived at by drawing the profit and loss account in accordance with Parts II and III of Schedule VI of the Companies Act, and therefore, the Commissioner (Appeals) was not justified in allowing the assessee's claim of higher depreciation. The counsel for the assessee agreeing in principle that the profit arrived at by drawing the profit and loss account in terms of Parts II and III of Schedule VI to the Companies Act, has to be considered for the purpose of section 115J of the Act, but disputed the claim of the assessing officer with regard to his so-called observation that depreciation is to be allowed on pro rata basis on

the plea that section 115J does not speak of such pro rata basis.

6. After careful consideration of the rival submissions, facts and circumstances of the case and the decision in the case of Vandana Rolling Mills Ltd. (supra), we are in agreement with the submissions of the learned Departmental Representative that it is the profit arrived at by drawing profit and loss account in terms of Parts II and III of Schedule VI to the Companies Act, which has to be considered for the purpose of section 115J, but at the same time we find from the order of the Commissioner (Appeals) as well as of the assessing officer that none of the authorities have given a specific finding as to whether the assessee had drawn profit and loss account in terms of Parts II and III of Schedule VI to the Companies Act or not. Under these circumstances, we, in the interest of justice, are of the opinion that the issue may be remanded because to the file of the assessing officer with the direction that the book profit for the purpose of section 115J may be considered on the basis of profit and loss account drawn as provided under sub-section (1A) of section 115J. Consequently we restore this issue back to the file of the assessing officer for fresh decision in accordance with law, after allowing the assessee a proper opportunity of being heard.

7. The third issue raised by the revenue in this appeal relates to the exclusion of excise duty and sales-tax from the total turnover for the purpose of section 80HHC.

8. The learned Departmental Representative, after relying on the decision of the Hon'ble Supreme Court in the case of CIT v. T. Naggi Reddy (supra) wherein the Hon'ble Apex Court has held that in the case of an assessee who maintains his accounts on mercantile system, sales-tax collected but not paid to the sales-tax department pending adjudication of dispute over his liability to pay sales-tax, is a revenue receipt of the year in which it is collected, submitted that since the assessee was maintaining its books of account on mercantile system, the sales-tax as well as excise duty had to be part of its turnover for the purpose of section 80HHC of the Income Tax Act, 1961 and, therefore, pleaded that the order of the Commissioner (Appeals) on this point may be reversed.

The counsel for the assessee, however, after relying on the decision of the Hon'ble Bombay High Court in the case of CIT v. Sundarshan Chemicals Industries Ltd. : [2000]245ITR769(Bom) , submitted that the excise duty and sales-tax having no element of profit in them cannot be taken as part of total turnover for the purpose of section 80HHC and, therefore, supported the order of the Commissioner (Appeals).

9. After careful consideration of the facts and circumstances of the case, rival submissions and the decisions relied upon by the parties, we are of the opinion that the decision of the Hon'ble Supreme Court relied upon by the learned Departmental Representative is distinguishable on facts and the issue raised by the revenue is covered in favour of the assessee and against the revenue by the decision of Hon'ble Bombay High Court in the case of Sudarshan Chemicals Industries Ltd. (supra). In view of these facts, we do not find any infirmity in the order of the Commissioner (Appeals) on this point.

10. In the result, the revenue's appeal is partly allowed for statistical purposes.