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Court : Chennai

Decided On : Jan-07-2005

Reported in : [2005]146TAXMAN25(Mad)

Appeal No. : T. C. No. 97 of 2000 7 January 2005

Appellant : Sakthi Sugars Ltd.

Respondent : Cit

Advocate for Pet/Ap. : P. P. S. Janarthana Raja, *for the Assessee J. Nareshkumar, for the Commissioner*

Judgement :

N.V. Balasubramanian J.

Pursuant to the directions of this court in T. C. P. No. 766 of 1997 dated 25-6-1998, the Income Tax Appellate Tribunal has stated a case and referred the following question of law for consideration :

'Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee was not entitled to weighted deduction under section 35C of the Income Tax Act, in respect of the entirety of the expenditure incurred by way of motor vehicle maintenance of the cane department, transport of fertilisers and travel expenses of the cane department ?'

1. The assessment year involved is 1983-84. The assessee is a public limited company and its main business is the manufacture of sugar. The assessee claimed, in its assessment proceedings, weighted deduction on certain expenses under section 35C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), but the assessing officer disallowed the following expenses :

Rs.

1. 50 per cent. of motor vehicle maintenance of the cane department

2,55,112

2. Transport of fertilizer

42,155

3. 60 per cent. of cane travelling expenses

1,56,900

The Commissioner (Appeals), on appeal preferred by the assessee, upheld the disallowance made by the assessing officer for the reasons stated by him for the earlier assessment year 1982-83 and dismissed the appeal preferred by the assessee. The assessee carried the matter in further appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Appellate Tribunal') and the Appellate Tribunal concurred with the reasoning of the Commissioner (Appeals) and held that the expenditure incurred by the assessee did not qualify for weighted deduction in terms of clause (b) of section 35C of the Act. The assessee has challenged the order of the Appellate Tribunal and on the basis of the directions of this court, the case has been stated on the question of law mentioned earlier.

3. The submission of Mr. P. P. S. Janarthana Raja, learned counsel for the assessee is that the entire expenditure incurred by the assessee on the maintenance of motor vehicles in the cane department would qualify for deduction. He also submitted that the entire travelling expenses incurred by the assessee in the cane department would also qualify for deduction, and the assessing officer was not correct in disallowing 60 per cent. of the travelling expenses. Learned

counsel submitted that the expenditure incurred by the assessee for the transport of fertiliser would also qualify for weighted deduction under section 35C of the Act.

Mr. J. Nareshkumar, learned junior standing counsel for the revenue, on the other hand, submitted that the Tribunal was justified in upholding the disallowance as no material was placed before the assessing officer or the Commissioner (Appeals) or the Appellate Tribunal by the assessee to establish that the expenditure disallowed would fall within the qualifying clause under section 35C of the Act.

4. We have carefully considered the submissions of Mr. P. P. S. Janarthana Raja, learned counsel for the assessee, and Mr. J. Nareshkumar learned junior standing counsel for the revenue. We are of the view, to appreciate the point that arises in the reference, it is necessary to refer to section 35C of the Act which reads as under :

'35C. Agricultural development allowance.(1)(a) Where any company or a co-operative society is engaged in the manufacture or processing of any article or thing which is made from, or uses in such manufacture or processing as raw material, any product of agriculture, animal husbandry, or dairy or poultry farming, and has incurred, after the 29-2-1968, but before the 1-3-1984, whether directly or through an association or body which has been approved for the purposes of this section by the prescribed authority any expenditure in the provision of any goods, services or facilities specified in clause (b) to a person (not being a person referred to in clause (b) of sub-section (2) of section 40A1 who is a cultivator, grower or producer of such product in India, the company or cooperative society shall, subject to the provisions of this section, be allowed a deduction of the amount of such expenditure incurred during the previous year.

(b) The goods, services or facilities referred to in clause (a) are the following :

(i) fertilizers, seeds, pesticides, concentrates for cattle and poultry feed, tools or implements for use by such cultivator, grower or producer;

(ii) dissemination of information on, or demonstration of, modern techniques or methods of agriculture, animal husbandry, or dairy or poultry farming, or advice on

such techniques or methods;

(iii) such other goods, services or facilities as may be prescribed.

Explanation. In computing the expenditure which is to be allowed as deduction under this section, the amount, if any, received by the company or co-operative society in consideration of, or as compensation for, such goods, services or facilities shall be deducted.

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure of the nature specified in sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other assessment year.'

Section 35C was introduced by the Finance Act, 1968, with effect from 1-4-1968, and was deleted by the Direct Tax Laws (Amendment) Act, 1987, with effect from 1-4-1989. There is no dispute, on the facts of the case, that the assessee-company is engaged in the manufacture of sugar and used sugarcane as raw material. The only question is whether the above three items of expenditure which are the subject-matter of the tax case reference would qualify for weighted deduction under section 35C of the Act.

5. In so far as the expenditure on maintenance of motor vehicles in the cane department is concerned, we find from the order of the assessing officer that 50 per cent. of the expenditure was taken as being qualified for weighted deduction and the balance was disallowed. The Commissioner (Appeals) also upheld the disallowance which was confirmed by the Appellate Tribunal. We find that the assessee has not placed any material to show that the entire expenditure incurred on the maintenance of motor vehicles in the cane department would qualify for weighted deduction under section 35C of the Act. In other words, there was no material placed before the assessing officer or the Commissioner (Appeals) or the Appellate Tribunal to establish that the entire expenditure incurred on the maintenance of motor vehicles in the cane department would qualify for weighted deduction. We are of the view that in the absence of any material placed by the assessee, the Appellate Tribunal was justified in upholding the disallowance of 50

per cent. of the expenditure on maintenance of motor vehicles in the cane department and it cannot be assumed that the entire expenditure on the maintenance of motor vehicles in the cane department was for the purposes mentioned in clause (b) of section 35C of the Act. We hold that in the absence of such material produced by the assessee to establish that the entire expenditure on the maintenance of motor vehicles in the cane department was incurred for any of the purposes mentioned in clause (b) of section 35C of the Act, the Appellate Tribunal was justified in holding that only 50 per cent. of the expenditure incurred qualified for weighted deduction.

In so far as travelling expenditure incurred in the cane department is concerned, the assessing officer disallowed 60 per cent. of the amount claimed on the ground that the amount so disallowed did not qualify for weighted deduction. The view of the assessing officer was confirmed by both the Commissioner (Appeals) and the Appellate Tribunal. We also find that the assessing officer disallowed 50 per cent. of the expenditure on maintenance of motor vehicles and 60 per cent. of the travelling expenditure in the cane department following the order of the Commissioner (Appeals) for the earlier assessment year 1982-83 and that order had been accepted by the assessee. The Tribunal had the opportunity to look into the records and concurred with the reasons of the Commissioner (Appeals). We therefore hold that in the absence of any material placed to substantiate the plea of the assessee that the entire expenditure incurred for the maintenance of motor vehicles in the cane department as well as the travelling expenditure incurred in the cane department would come within the qualifying expenditure as mentioned in clause (b) of section 35C of the Act, the assessing officer was justified in apportioning the expenditure and disallowing a portion thereof and the disallowance was, in our view, rightly upheld by the Appellate Tribunal. Further, the assessee has not challenged the finding of the Appellate Tribunal by raising a separate question.

In so far as the expenditure on transport of fertiliser is concerned, the assessee claimed a sum of Rs. 42,155 to qualify for weighted deduction under section 35C of the Act. The assessing officer disallowed the entire amount which was confirmed by the Commissioner (Appeals) as well as by the Appellate Tribunal.

However, after hearing learned counsel for the assessee and the revenue, we are of the view that the transport of fertiliser would be a service rendered by the assessee to the cultivator as it is stated that the fertiliser has to be carried from the godown to the agricultural land to be used by the cultivator. Hence, we are of the view, the expenditure incurred on transport of fertiliser would qualify for deduction as it is a service within the meaning of section 35C(b)(i) of the Act and unless the fertiliser is transported, it is not possible to use fertiliser for cultivation of sugarcane. We find that the Appellate Tribunal has not gone into the details of the expenditure. Normally, we would have remitted the matter to the Appellate Tribunal to consider the question again, but however, considering the meagre amount involved and also taking note of the assessment year in question, namely 1983-84, we are not inclined to remit the matter to the Appellate Tribunal after a period of nearly 20 years from the end of the assessment year. Accordingly, we hold that the expenditure incurred on the transport of fertiliser would qualify for weighted deduction under section 35C of the Act.p

6. Consequently, we hold that the Appellate Tribunal was right in holding that the assessee was not entitled to weighted deduction under section 35C of the Act in respect of the entire expenditure on the maintenance of motor vehicles in the cane department and the travelling expenses in the cane department, but the Appellate Tribunal was not right in holding that the assessee was not entitled to weighted deduction under section 35C of the Act in respect of the entire expenditure incurred on the transport of fertilisers. The question of law referred to us is answered accordingly. However, in the circumstances of the case, there will be no order as to costs.