

Cit Vs. Funskool (India) Ltd.

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Court : Chennai

Decided On : Apr-23-2007

Reported in : [2007]294ITR642(Mad)

Judge : P.D. Dinakaran and ;P.P.S. Janarthana Raja, JJ.

Appellant : Cit

Respondent : Funskool (India) Ltd.

Disposition : Appeal dismissed

Judgement :

P.D. Dinakaran, J.

1. The above tax case appeal is directed against the order of the Income Tax Appellate Tribunal in I. T. A. No. 913/Mds/94 dated 17-3-2003, raising the following substantial questions of law:

(a) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that investment allowance/depreciation can be allowed on the additional customs duty paid during the year in respect of machinery imported and installed in an earlier year ?

(b) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that investment allowance/depreciation not claimed when the return was

filed or even during the assessment proceedings ought to be allowed ?

2. The assessee-company filed its return of income admitting a net loss of Rs. 1.36 crores. After making various additions, the loss was brought down to Rs. 1.06 crores.

3. Aggrieved by the same, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) claiming investment allowance raising a new ground. The Commissioner holding that the claim for investment allowance was not made in the original return or before the assessing officer during the assessment proceedings, rejected the same.

4. Enraged by the order of the Commissioner, the assessee preferred an appeal before the Income Tax Appellate Tribunal claiming investment allowance and depreciation allowance on 'the ground that the payment of additional customs duty in respect of goods imported earlier ought to be added to the value of the goods. The Tribunal allowed the claim of the assessee towards investment and depreciation allowance holding that the payment of additional customs duty had to be added to the cost of machinery imported. Hence the appeal by the revenue.

5. In *Atlas Radio and Electronics P. Ltd. v. CIT* : [1994]207ITR329(Guj) , when a question 'whether the assessee was entitled to claim development rebate in the subsequent year for the machinery purchased during the preceding assessment year' was referred to the Gujarat High Court, it was held that even though the amount of sales tax was paid in the subsequent year, the liability to pay sales tax arose in the accounting period relevant to the assessment year and since the liability to pay sales tax raised the cost of the machinery, development rebate had to be claimed in the assessment year in which the machinery was purchased and accordingly, the assessee was entitled to development rebate in the assessment year in which the machinery was purchased.

6. In the instant case, the assessee paid the additional customs duty in the subsequent period of acquisition and claimed the investment and depreciation allowance during the period when the machinery was imported. The ratio laid down in the decision cited supra, on principle, is applicable to the duty impugned

in the instant case also. Hence, we are of the considered opinion that the Tribunal had rightly allowed the claim of the assessee for investment and depreciation allowance.

7. Answering the substantial question of law in favour of the assessee, the appeal is dismissed. No costs.

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