Asstt. Cit Vs. Master Stores

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Court : Kolkata

Decided On : Apr-17-2001

Reported in : (2002)75TTJ(Cal)452

Appeal No. : ITA No. 2234/Cal/1996 17 April 2001 A.Y. 1993-94

Appellant : Asstt. Cit

Respondent : Master Stores

Advocate for Pet/Ap. : L.D. Mahalik, *for the Revneue* S.L. Kochar, *for the Assessee*

Judgement :
ORDER

S. Bandyopadhyay, A.M.

The first ground in this departmental appeal relates to the addition of an amount of Rs, 13,01,382 consisting of payments made by the assessee towards gratuity, retirement benefit, ex gratia, etc., to its employees, as deleted in the first appeal.

The assessee claimed expenses towards payments of gratuity of Rs. 10,57,173, retirement benefit of Rs. 2,17,934 and also ex gratia payment of RS 1,75,500 to its retrenched workers. Another amount of Rs. 775 was also debited under the head 'Gratuity' in the head-office account. The assessee was running a flour mill. The assessee submitted before the assessing officer that on account of deteriorating

business condition, the assessee declared a closure in its flour mill after running the same for a period of two months only, viz., April and May, 1992, during the year under consideration. All the payments were claimed to have been made to the various workers and employees due to the said closure. The assessing officer was, however, of the opinion that since the assessee had closed its business of running the flour mill, the expenses incurred by the assessee towards making payments to the erstwhile workers by way of gratuity, retirement benefit, etc., had not been incurred wholly and exclusively for the purpose of running the business of the assessee. The assessing officer was furthermore of the view that in any case, since the assessee derived a benefit of enduring nature by retrenching its work-force, the entire expense incurred in that connection was required to be treated as capital expense. The assessing officer furthermore discussed in this connection that the addresses of the retrenched workers were shown to be outside Calcutta and, therefore, it was clear that the workers concerned had left Calcutta at the time the assessment was taken up by the assessing officer. The assessing officer was thus of the opinion that even the genuineness of the payments was also difficult to enquire into. As such, the assessing officer held that the total expense of Rs. 13,01,382 in that regard was not required to be allowed under section 37. He thus disallowed the entire claim.

2. Before the Commissioner (Appeals), it was contended on behalf of the assessee that the assessee did not actually close its business permanently and that there was only a temporary cessation of the business during the year under consideration. It was shown that the factory licence of the assessee and also registration with E.S.I. and employees provident fund scheme were continued. It was furthermore shown that during the year under consideration itself the assessee had effected manufacturing sales of Rs. 75,00,000 approximately. By referring to the audited accounts of the assessee for the two successive years, it was pointed out that the assessee continued to carry on its operations of flour-milling and sale of wheat products in those years. Furthermore, it was also pointed out that in addition to the milling of the assessee's own stock of wheat, the assessee also carried on milling of wheats on behalf of the Government of West Bengal, also. In this regard, references were also made to the periodical returns furnished by the assessee with the Director of Rationing, Government of West

Bengal, every month not only during the year under consideration but also in the subsequent period. It was furthermore pointed out that the plant and machinery and other assets of the assessee were not at all sold out and were on the other hand, run by the assessee. It was again pointed out that the senior staff members of the mill and also the office staff were not at all disturbed. It was thus contended that in order to run the business in a smooth manner, the assessee resorted to the procedure of declaring the temporary closure and get rid of a large portion of its old work-force, who had become ineffective, in the process. It was thus contended that the assessee was entitled to allowance of the expenses incurred by it solely and exclusively for the purpose of running its business in a better manner. It was furthermore pointed out to the Commissioner (Appeals) that in his order under section 144A, the Deputy Commissioner admitted that manufacturing activities were carried on by the assessee during the year under consideration and furthermore that the said manufacturing activities went on continuing during the periods covered by assessment years 1994-95 and 1995-96.

Taking into consideration all these aspects, the learned Commissioner (Appeals) held that there was no total closure of the business of the assessee but that a temporary cessation of the work had simply been effected for running the business in a better manner. The Commissioner (Appeals) thus held that, therefore, the expenses incurred by the assessee towards retrenching its staff was required to be allowed as, genuine business expenses incurred by it exclusively in connection with its business operations. Accordingly, the Commissioner (Appeals) deleted the entire addition in this regard.

3. At the stage of the hearing of the appeal before us, the learned Departmental Representative pointed out that in the closure notices issued by the assessee to the member of staff as well as furnished before the different authorities, total 'closure' of the operations of the assessee from 1-2-1993, was mentioned. On the other hand, the learned counsel for the assessee reiterated all the facts submitted before the Commissioner (Appeals) and pointed out that the flour mill actually worked in the subsequent two years. So far as the genuineness of the payments is concerned, the learned counsel for the assessee pointed out to the audited books of accounts and other documents including vouchers, etc., maintained by the

assessee and claimed that the genuineness of the payments could not at all be doubted.

4. In support of his contention that in the circumstances, the claim of the assessee towards allowability of the expenditure under section 37 is acceptable, the learned counsel for the assessee relied on the following judgments :

(i) Sassoon J. David & Co, (P) Ltd. v. CIT : [1979]118ITR261(SC) .

The Supreme Court held in this case that the expression 'wholly and exclusively' used in section 10(2) (xv) of the Income Tax Act, 1922 (corresponding to section 37 of 1961 Act), does not mean 'necessarily'. It was furthermore held that ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business and furthermore that such expenditure may be incurred voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction in respect of the expense concerned. The Supreme Court furthermore remarked in the said case, as below :

'It is too late in the day now, whatever may have been the position about two decades ago, to treat the expenditure incurred by a management in paying reasonable sums by way of gratuity, bonus, retrenchment compensation of compensation for termination of service as not business expenditure. Such expenditures would ordinarily fall within the scope of section 10(2)(xv) of the Act'.

CIT v. Heath & Co. (Calcutta) (P) Ltd. : [1978]114ITR605(Cal)

It was held in this case that expenditure though not out of necessity but incurred voluntarily and for vehemently facilitating the carrying on of the trade or business will be allowable expenditure. It was furthermore held by the Hon'ble Calcutta High Court in this case that payment made to remove the possibility of a recurring disadvantage cannot be considered as a payment made acquired and enduing advantage so as to be considered a capital expenditure.

CIT v. Eskaps India (I) (P) Ltd. : [1991]191ITR674(Cal) ; and

CIT v. Delhi Safe Deposit Co. Ltd. : [1982]133ITR756(SC) .

The Hon'ble Delhi High Court held in this case that the expenditure incurred on the preservation of a profit-earning asset of a business is always a deductible expenditure.

5. The crux of the problem seems to be whether there was a permanent closure of the business of the assessee and in that way the payments to the workers were made after the said closure. The evidence on record and as discussed in detail by the learned Commissioner (Appeals) in his appellate order as well as by us also as above, clearly show that there was merely a temporary cessation of business and not a permanent closure of the same. The business of milling wheat continued in the two subsequent years. Even during the year under consideration also milling operations were there and sale of already milled flour was there even after discontinuance of the milling operations. In view of these positions, we are of the opinion that the expenditure must be considered to have been incurred during the course of the business of the assessee. There cannot be any doubt about the fact that the expenditure had to be incurred wholly and exclusively for the purpose of the business of the assessee, inasmuch as, no personal element can be considered to have crept in. By being able to retrench a large section of the work-force of the assessee, it was, no doubt, in a position to get some benefit of enduring nature, so far as its business operations were concerned. That by itself, however, cannot lead to the conclusion that the nature of expense was capital. The judgments as cited above clearly go in favour of the propositions that what the assessee secured by incurring the expense was running of the business in a smooth and perhaps healthier manner. Therefore, we agree with the learned Commissioner (Appeals) that the expenses under consideration are required to be allowed as deductible business expenditure. We uphold the order of the learned Commissioner (Appeals) in deleting the disallowance.

6. The next issue relates to the question of treatment of an amount of Rs. 1,77,752 under the head 'commission', as income from other sources. In its accounts, the assessee disclosed the above sum as commission receipt from M/s. Regency. Confirmation certificate in that regard was filed. However, in response to the

summons issued by the assessing officer under section 131, the partner of M/s. Regency failed to appear. It was submitted by the assessee that the assessee-firm procured orders from Indian Oil Corporation on behalf of M/s. Regency and thereby earned the commission income. The assessing officer however, found out that the assessee had not rendered any similar service in past nor were such services rendered for any other concern excepting M/s. Regency. It was furthermore contended on behalf of the assessee that the representative of the assessee, viz., Shri R. C. Arwaria used to visit the office of M/s. Indian Oil Corporation and procured orders. The assessee, however, failed, to produce Shri R.C. Arwaria for cross-examination. As such, the assessing officer held that in reality no commission had been earned by the assessee and in view of the position of huge loss in the assessee's case, the assessee had agreed to accommodate M/s. Regency to book commission payment by that concern which would be adjustable against the books loss of the assessee. As such, the assessing officer treated the amount of Rs. 1,77,752 as income from other sources.

7. Before the Commissioner (Appeals) also, it was submitted by the assessee that full details along with the certificate from the payer were furnished to the assessing officer. It was furthermore stated that the assessee-firm had intended to enlarge its business activities and accordingly, had appointed Shri Arwaria to attend to such matters. The Commissioner (Appeals) accepted the contention of the assessee in this regard that no direct evidence had been brought on record by the assessing officer to suggest that the commission had not actually been received from M/s. Regency. The Commissioner (Appeals) discussed in this connection that when the assessee discloses an amount from a particular source, it cannot be treated as income from any other source, unless there is some evidence or authority to conclusively establish that the same was an income not assessable under the head under which it has been claimed by the assessee. Accordingly, the Commissioner (Appeals) directed the assessing officer to treat the commission income as business income.

8. This is not the case of a claim of commission payment by the assessee. On the other hand, the assessee has merely shown receipt of commission and in that

regard not only full particulars but also a certificate from the payer concerned was also furnished before the assessing officer. Simply because the payer did not respond to the summons issued by the assessing officer under section 131, it cannot be said that the receipt of commission was not there. Again, if the assessing officer believed that the assessee had not received any commission income from M/s. Regency, he should have neglected that -income instead of trying to assess the same as income from other sources.

Taking into consideration all these aspects, we are finally of the view that the assessing officer has not been able to evidence conclusively that there was no receipt of commission income by the assessee, and in that way, the Commissioner (Appeals) must be considered to be correct in directing the assessing officer to treat the income as disclosed by the assessee. We uphold the order of the learned Commissioner (Appeals) on this issue.

9. In the result, the departmental appeal is dismissed.