

(2008) 08 P&H CK 0073

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of Income Tax

APPELLANT

Vs

Vardhman Spinning and General
Mills

RESPONDENT

Date of Decision: Aug. 11, 2008

Citation: (2009) 176 TAXMAN 157

Hon'ble Judges: Rajesh Bindal, J; Hemant Gupta, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Rajesh Bindal, J.

The following questions of law have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench (for short, "the Tribunal") arising out of order dated 26-10-1998 passed in I.T.A. No. 501/Chandi./84 for the assessment year 1977-78:

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in upholding order of CIT(A) in allowing the expenditure amounting to Rs. 63,291 relating to paper project intended to be set up at Saharanpur (U.P.) as revenue expenditure thereon ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in upholding the orders passed by the CIT(A) with regard to the grant of extra shift allowance on the cost of electric installations?

2. As far as question No. 1 is concerned, the assessee spent an amount of Rs. 63,291 to explore the possibility of setting up of a paper project in Saharanpur (U.P.). The expense came to be disallowed by the Assessing Officer with the observation that the same was not revenue in nature and was required to be capitalized. However, in appeal, the Commissioner of Income Tax (Appeals) [for short, the "CIT(A)"] accepted the contention of the assessee by holding that during the year 1980-81 also, similar

issue came up for consideration and referring to the Memorandum and Articles of Association of the Company, where the Company had spent certain amount for exploring the possibility of setting up of a new business, the same was allowed and in the present case also the same should be allowed as revenue expenditure. The revenue failed in appeal before the Tribunal.

3. Learned counsel for the revenue submitted that the expenses in question deserve to be disallowed for the simple reason that the same cannot be claimed as revenue expenditure because it was on account of pre-operative expenses which should have been capitalized against the plant to be set up. Whereas learned counsel for the assessee pointed out that the expenses were strictly in furtherance to the objects for which the company was set up and the same were revenue in nature. No asset as such was acquired from which enduring benefit could be availed of. In fact, it was on account of development expenses which has rightly been allowed as deduction by the CIT(A), as upheld by the Tribunal.

4. After hearing learned counsel for the parties, we find that the view expressed by the Tribunal allowing the expenses to be revenue in nature cannot be faulted with. It is a case where the assessee made certain expenses for exploring the possibility of setting up a paper project at Saharanpur which could not materialise. No asset of permanent nature with enduring benefit was acquired by the assessee. The plant could not be set up to which such an expenditure made could possibly be capitalized.

5. Accordingly, the question, referred to above, is answered against the revenue and in favour of the assessee.

6. As far as question No. 2 is concerned, it is not disputed that the issue raised is covered by an earlier judgment of this Court in CIT v. Mahavir Spinning Mills Ltd. [2008] 171 Tax 371.

7. For the reasons stated in Mahavir Spinning Mills Ltd.'s case (supra), the question is answered against the revenue and in favour of the assessee.

Reference is disposed of accordingly.