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High Court Of Punjab And Haryana At Chandigarh

Case No: Income Tax Appeal No. 374 of 2005

Abhishek Industries Ltd.	APPELLANT
Vs	
The Commissioner of Income Tax and Another	RESPONDENT

Date of Decision: Aug. 21, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 115JA, 143(1), 254

Citation: (2006) 206 CTR 450 : (2007) 290 ITR 655

Hon'ble Judges: Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Advocate: Radhika Suri, for the Appellant; S.K. Garg, for the Respondent

Judgement

Rajesh Bindal, J.
This order shall dispose of the above-mentioned four appeals.

2. For the sake of reference, facts have been taken from I.T.A. No. 374 of 2005. This appeal by the assessee is directed against order dated 3.3.2005, passed by the Income Tax Appellate Tribunal, Chandigarh Bench (for short, `the Tribunal'') in I.T.A. No. 841/Chandi/2000, for the assessment year 1997-98, raising following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the order of the Tribunal is perverse as the Tribunal has not allowed the assessee to raise the additional ground which has been concluded in favour of the assessee in all preceding years ?

(ii) Whether in the facts and circumstances of the case, the order of the Tribunal is contrary to the ratio of the Supreme Court in National Thermal Corporation v. CIT ?

(iii) Whether in the facts and circumstances of the case, the Tribunal has failed to exercise a jurisdiction vested in it by not allowing the assessee to raise the additional issue before the Tribunal.

3. Briefly, the facts are that the assessee filed its return of income as `Nil'' and declared income of Rs. 96,66,339/- u/s 115JA of the Income Tax Act, 1961 (for short, `the Act'') on 28.11.1997, which was processed u/s 143(1) of the Act on 30.3.1998. At the time of filing of return, the assessee appended a note with computation of income in the return, the relevant part of which is extracted as under:

The Company has received sales tax subsidy in the form of sales tax exemption granted by the Punjab State Govt. vide its notification No. GSR/65/P.A. 46/48/SS/27, 10.A and 30.A/AMD(1)/92 dated 30.9.92. This being directly linked to fixed capital investment, is in the nature of capital subsidy.

4. It is submitted by counsel for the appellant that the Assessing Officer, while passing the order of assessment, did not deal with the issue granting the consequential relief as per note appended with the return. Against the order of assessment, the assessee went in appeal before the Commissioner of Income Tax (Appeals) [for short, `the CIT (A)''], raising various other issues, which were decided against it in the order of assessment. The CIT (A) partly allowed the appeal. The assessee carried the matter further in appeal to the Tribunal and raised the following additional ground:

That treating sales tax subsidy in the sum of Rs. 1,84,82,903/- as Revenue receipt by the authorities below is highly unjustified in as much as such sales tax subsidy received by the appellant was capital in nature and may kindly be so held by the Hon''ble Bench accordingly.

5. The Tribunal did not permit raising of additional ground for the reason that omission of this ground from the original memo of appeal was not reasonable.

6. As to whether additional ground of appeal can be raised by an assessee before the appellate authority during the course of hearing of the appeal or not, is no more res integra. In Jute of Corporation of India Ltd. Vs. Commissioner of Income Tax and another, and National Thermal Power Co. Ltd. Vs. Commissioner of Income Tax, , Hon''ble the Supreme Court has upheld the right of the assessee to raise additional ground of appeal. The relevant observations in National Thermal Power Co. Ltd.''s case (supra) are extracted below:

Under Section 254 of the Income Tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law.

If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a nontaxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal u/s 254 only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/ cross-objections before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

In the case of Jute of Corporation of India Ltd. Vs. Commissioner of Income Tax and another, , this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no good reason to justify curtailment of the powers of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income Tax Officer. This court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier for good reasons. The Appellate Assistant Commissioner should exercise his discretion in permitting or not permitting the assessee to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. As per above judgments, the only pre-condition for permitting an assessee to raise additional ground is that the request should be reasonable. In our view, the request made by the assessee for raising additional ground of appeal in the present case was not unreasonable, firstly for the reason that the facts with regard to the legal issues, being raised by the assessee as additional ground of appeal, were already on record and secondly on merits, the issue sought to be raised had already been decided by the Tribunal in favour of the assessee for other years. We find merit in the contention raised by learned Counsel for the assessee and accordingly, set aside the order passed by the Tribunal and permit the assessee to raise additional ground of appeal, mentioned above.

8. Procedurally, the course would have been that the matter is required to be remitted back to the CIT(A) for consideration of the additional ground of appeal being permitted to be raised by the assessee. However, in view of the subsequent development, namely, that in an appeal filed by the Revenue against the order passed by the Tribunal in favour of the assessee on an identical ground on the merits of additional ground, for the

assessment year 1993-94, this Court, in I.T.A. No. 110 of 2005 - Commissioner of income tax-I, Ludhiana v. Abhishek Industries Ltd. Ludhiana, decided on 4.8.2006, had set aside the order passed by the Tribunal while holding that subsidy of the kind received by the assessee would be revenue receipt and not capital in nature. As to whether in these circumstances, still we should direct the CIT(A) to decide the issue or take a final decision in the present appeal by treating that additional issue raised therein has been considered on merits by the authorities below, guidance to that effect is available in the judgment of Hon"ble the Supreme Court in Jute Corporation of India Ltd."s case (supra) in the following terms:

The next question which arises for consideration now is as to what order should be passed in the present circumstances. In view of the findings recorded by us, ordinarily, we should direct the High Court to call for the statement of case from the Tribunal and thereupon decide the matter afresh, but this procedure would be time consuming. Since we have already discussed the correct position in law, we do not consider it necessary to follow the usual procedure. Since the view taken by the Income Tax Appellate Tribunal is not sustainable in law, we grant leave against the order of the Income Tax Appellate Tribunal under Article 136 and set aside the same and remit the matter to the Income Tax Appellate Tribunal to consider the merits of the deduction permitted by the Appellate Assistant Commissioner.

9. In view of our above discussions and following the dictum of law laid down by this Court in Abhishek Industries'' case (supra), the additional issue, permitted to be raised by the assessee, is decided on merits while holding that sales tax subsidy received by the assessee is a revenue receipt and not capital in nature.

10. The appeals are disposed of in the manner indicated above.