(2012) 03 P&H CK 0312

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Appeal No. 408 of 2011 (O and M)

Commissioner of Income Tax, Patiala		APPELLANT
	Vs	
Santosh Structural and Alloys Ltd.		RESPONDENT

Date of Decision: March 26, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 154, 2(11), 2(28A), 2(29B)

Citation: (2012) 251 CTR 53 : (2012) 206 TAXMAN 616

Hon'ble Judges: M.M. Kumar, J; Alok Singh, J

Bench: Division Bench

Advocate: Savita Saxena, for the Appellant;

Final Decision: Dismissed

Judgement

M.M. Kumar, J.

The short issue raised in the present appeal preferred by the Revenue u/s 260-A of the Income Tax Act, 1961 (For brevity ''the Act'') is whether the plant and machinery (not in use) reflected for the value of Rs. 1.23 Crores acquired in the financial year 1997-98 and partly in the year 1998-99 would be treated as long term capital assets for the assessment year 2006-07, when it was sold in the financial year 2005-06. The revenue has challenged the view of the Tribunal treating the aforesaid plant and machinery as long term assets, which are held entitled to benefit of cost inflation index for computing the long term capital gain. However, the Revenue has claimed that the following questions of law would arise for determination of this Court and have pressed for admission of the appeal:

1. Whether on the facts and circumstances of the case, the Hon''ble ITAT was right in law in holding that the assessee had the option to maintain two separate blocks of assets i.e. Plant & Machinery (put to use) and the Plant and Machinery (Not put to

use) when same percentage of depreciation has been prescribed for plant and machinery as per Section 2(11) of the Income Tax Act, 1961.

2. Whether on the facts and circumstances of the case, the Hon''ble ITAT was right in law in holding that the assessee had the option to maintain two separate blocks of assets which are similar in nature with same prescribed percentage of depreciation as per provisions of Section 2(11) of the Income Tax Act, 1961, on the ground that second set of assets although similar in nature were not put to use, thereby ignoring the provisions of Section 2(11) of the Act.

3. Whether on the facts and circumstances of the case, the Hon''ble ITAT was right in law in observing that the plant and machinery not put to uses constituted individual and separate ''block of assets'' within the meaning of section 2(11) of the Income Tax Act, 1961 ignoring the provisions of Section 32(1)(ii) of the Income Tax Act 1961 whereby depreciation is allowed only on a ''block of assets'' for all similar assets with same prescribed percentages.

4. Whether on the facts and circumstances of the case, the Hon''ble ITAT was right in law in not appreciating that the said new plant and machinery did not constitute a ''Depreciable Asset'' within the meaning of Section 50 of the Income Tax Act, 1961 read with Explanation 5 to Section 32(1) of the Income Tax Act, 1961 whereby depreciation is deemed to have been allowed for such assets and it is not necessary that the depreciation is actually allowed.

Before adverting to legal position, it would be necessary to set out the facts in brief. The assessee-respondent filed return on 30.11.2006 declaring nil income in respect of the assessment year 2006-07. The case was subsequently taken up for scrutiny. The assessment was completed u/s 143(3) of the Act vide order dated 10.12.2008 (A-1) at an income of Rs. 3,58,610/-, inter alia, making disallowance of appreciation at Rs. 4,04,340/- because unit belonging to the assessee-respondent was out of production from the period commencing March, 1998 and further adjusting brought forward depreciation losses against the capital gain on the sale of plant and machinery, which was effected in the financial year 2005-06. The assessee-respondent filed an application u/s 154 of the Act seeking rectification of order with a request to the Assessing Officer to allow the benefit of cost inflation index by pleading that the plant and machinery (not in use) has always been shown as a separate item and no depreciation on the aforesaid item was ever claimed. It was requested that the provision of Section 50 of the Act would not be attracted because it covers only depreciable assets if it is to fall under short term capital assets. The basic feature of the aforesaid provision is that the depreciation on such assets had already been claimed by the assessee-respondent. It is only on the sale of such assets, the gain arising on the said sale of assets minus the WDV of the asset is considered as short term capital gain in the hands of the assessee-respondent as per provisions of Section 50 of the Act. The assessee-respondent claimed that since no depreciation at any stage was claimed, Section 50 of the Act would not apply and the assets (not in use) acquired by the assessee-respondent would be assessable as long term capital gain according to the definition given in Section 2(29-B) of the Act. However, the Assessing Officer dismissed the rectification application vide order dated 21.06.2009 (A-2).

2. The assessee-respondent challenged the order passed by the Assessing Officer u/s 143(3) of the Act and order passed u/s 154 of the Act before the CIT (A). CIT(A) held vide separate order dated 30.09.2010 (A-3) passed in both the appeals that Section 50 of the Act would apply on the profits gain on the sale of the plant and machinery (not in use) and the Assessing Officer has rightly assessed the gain as short term capital gain (A-3) (Colly.).

3. The assessee-respondent challenged the view taken by the CIT(A) before the Tribunal by filing two separate appeals. The Tribunal vide order dated 31.05.2011 (A-4), allowed the appeal of the assessee-respondent against the order u/s 154 of the Act (ITA No. 1397/Chd/2010), holding that the assessee-respondent was prevented by a sufficient cause in not filing the appeal within the time prescribed by the statute before the CIT(A). Accordingly, the application seeking condonation of delay was allowed by the Tribunal. On the quantum appeal (ITA No. 1398/Chd./2010), the Tribunal proceeded to hold that Section 50 of the Act did not apply and the plant and machinery (not in use) have to be regarded as long term capital gain, when they were sold because no depreciation on those assets was ever claimed by the assessee-respondent. Holding that Section 50 of the Act is a special provision for computation of capital gain in case of depreciable assets, the Tribunal has maintained that where an asset is forming part of block of asset in respect of which depreciation had been allowed under the provisions of Sections 48 and 49 of the Act have been subjected to modification. In other words, where the full value of the consideration received or accruing as a result of transfer of the asset together with the full value of consideration received or accruing on account of transfer of other capital asset falling within the block of asset during the previous year, exceeds the aggregate of the following amount i.e. the expenditure incurred in connection with such transfer plus the written down value of the block of assets at the beginning of the previous and actual of any cost of any asset acquired during the year falling within the block of years and excess is deemed to be capital gain arising from transfer of short term capital asset. However, the plant and machinery (not in use) were not depreciable assets.

4. In para 14 of the order, the Tribunal has rightly noticed that the assessee-respondent had sold the plant and machinery for a total consideration of Rs. 2.35 Crores. The said machinery was acquired partly in the financial year 1997-98 for a value of Rs. 43.03 lacs and the balance in the financial year 1998-99 of the value of Rs. 80.03 lacs. The total value has been worked out at Rs. 1.23 Crores. The assessee-respondent filed on record the list of assets starting from the year ending 31.03.1998 to 31.03.2006. The assessee-respondent had claimed depreciation in

respect of other item namely, on the plant and machinery having written down value of Rs. 1.19 Crores for the financial year 1997-98. The addition in the plant and machinery of Rs. 43.03 lacs was reflected separately under the head ''plant and machinery (not in use)'' because no depreciation was claimed on the aforesaid item. In the succeeding year ending 31.03.2009, the assessee-respondent had claimed depreciation @ 25% on plant and machinery. However, though an addition of Rs. 80.03 lacs was made to the plant and machinery (not in use) but no depreciation was claimed on the total machinery of Rs. 1.23 Crores under the aforesaid head. Thereafter from year to year, the assessee-respondent was claiming depreciation @ 25% on the first head on plant and machinery in addition to the other assets owned by it on which depreciation was claimed. However, no depreciation was claimed on the plant and machinery capitalized under the head ''plant and machinery (not in use)''. Even for the assessment year 2005-06, the value of the said plant and machinery (not in use) is reflected at Rs. 1.23 Crores. Only in the financial year 2005-06, the said plant and machinery has been reflected to have been sold for 2.23 Crores, resulting in profit of Rs. 1.10 Crores. It is, thus, clear that the assessee-respondent for all the earlier years, had reflected in its list of fixed assets plant and machinery under two separate heads, namely, plant and machinery on which depreciation has been claimed in the year prior to the financial year 1996-97; another asset was created capitalized as plant and machinery (not in use) for financial year 1997-98 and no depreciation was ever claimed on the addition of plant and machinery totalling Rs. 1.23 Crores. There was no dispute that the assessee-respondent had those assets for a period of more than 36 months, which is long term capital asset as defined u/s 2(28A) of the Act and the capital gain arising on transfer is required to be assessed as long term capital as per the definition given in Section 2(29B) of the Act. The aforesaid provision has overriding effect contained in Section 2(42A) of the Act. Therefore, the plant and machinery (not in use) could not be merged with the other head titled as plant and machinery. The view of the Tribunal is crystal clear in para 15 of the judgment which reads as under.

15. In the facts of the present case, the assessee had reflected the said asset as part of its list of assets but the block of assets on which depreciation was claimed by the assessee was plant and machinery per se. Whereas the present assets which have been transferred during the year under consideration were part of another block of assets termed as plant and machinery (not in use). Admittedly, no depreciation had ever been claimed on the aforesaid assets and were capitalized separately by the assessee. In such circumstances where the assessee has shown two block of assets separately i.e. The one on which depreciation was claimed @ 25% and the other on which no depreciation whatsoever was claimed in any of the previous years, the two assets are different from each other and plant and machinery acquired in succeeding years do not merge with the earlier block of assets of plant and machinery. The assessee having not claimed any depreciation on the same cannot be burdened with the provisions of Section 50 of the income tax Act as the basic

requirement for the applicability of section 50 of the Act is the assets forming part of block of assets in respect of depreciation had been allowed under the Act. In the absence of any depreciation being allowed to the assessee in any of the previous years on the said plant and machinery (not in use), the gain arising on the transfer of the said asset being a long term capital asset in turn is long term capital gain. While computing the long term capital on the sale of the asset, the provisions of Section 48 are applicable for computing the income chargeable under the head "capital gain" and the assessee is entitled to the benefit of indexed cost of acquisition, which working out the gain arising on the transfer of the said capital asset. Accordingly, the order of the CIT(A) is set aside and the Assessing Officer is directed to allow the claim of the assessee by adopting the indexed cost of acquisition in determining the income from long term capital gain on sale of plant and machinery (not in use). Thus grounds of appeal raised by the assessee on the merits of the addition are allowed. In view of the same, there is no merit in the grounds of appeal raised by the assessee against the rejection of claim u/s 154 of the income tax Act.

5. When we confronted learned counsel for the appellant with the aforesaid factual as well as legal position, he could not successfully argue that any question of law would arise because all the questions as claimed by the Revenue are based on presumption that plant and machinery (not in use) would be covered by the expression ''block of assets'' even if no depreciation has ever been claimed. Once the Tribunal has recorded a categorical finding of fact that the plant and machinery, which is covered by Section 50 of the Act, would be a depreciable asset and not the one on which no depreciation was ever claimed then such assets which are not depreciable, could not ever be assessed u/s 50 of the Act. The appeal does not raise any question of law much less a substantive question of law and therefore, the same does not warrant admission. Accordingly, the appeal fails and the same is dismissed.