(2006) 12 P&H CK 0099

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Commissioner of Income Tax	APPELLANT
Vs	
Avery Cycle Inds. Ltd.	RESPONDENT

Date of Decision: Dec. 22, 2006

Acts Referred:

- Evidence Act, 1872 - Section 106, 80HHC, 80I
- Income Tax Act, 1961 - Section 254, 36

Citation: (2008) 298 ITR 239

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

Bench: Division Bench

Judgement

Rajesh Bindal, J.
This appeal by the Revenue is directed against the order dated January 29, 2003, passed by the Income Tax Appellate Tribunal, Chandigarh Bench "A" (for short, "the Tribunal") in I. T. A. Nos. 342/Chandi/96 and 384/Chandi/96, for the assessment year 1992-93, raising the following substantial questions of law:

(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding the expenses of Rs. 86,914 spent on silver wares for distribution to the dealers and foreign visitors as business expenditure?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting the disallowance of interest of Rs. 2,43,000 on the grounds that there is no direct nexus between the borrowing and interest-free advances made to certain parries?

(iii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding to exclude ST and CST from the total turnover for computation of deduction u/s 80HHC?

(iv) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding the expenses of Rs. 2,10,142 spent for distribution of Titan watches to the employees, as business expenditure?

(v) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the new industrial undertaking began to manufacture or produce articles in the previous year relevant to the assessment year 1985-86 and not the assessment year 1984-85 and thereby allowing the benefit of deduction u/s 80I in this year?

Question No. (i)

2. It is not disputed before us that, similar question has been gone into in the assessee''s own case in I. T. A. No. 73 of 2005 decided on September 12, 2006 Commissioner of Income Tax Vs. Avery Cycle Industries Ltd., for the assessment year 1993-94, wherein the same has been decided against the Revenue and in favour of the assessee. Accordingly, for the reasons recorded in the above referred case, the present question is also decided against the Revenue and in favour of the assessee.

Question No. (ii)

3. It was found as a fact that during the year in question, the assessee had advanced a sum of Rs. 13,50,000 to Shri Hans Raj Pahwa without any business consideration and without carrying any interest. It was further found that during the year, the assessee incurred interest liability of Rs. 2,19,86,611. The Tribunal accepted the plea raised by the assessee that there being no direct nexus between the borrowing and the interest-free advances made, the interest component on interest-free advances made to certain parties cannot be disallowed.

4. We have already considered an identical issue in Commissioner of Income Tax-I Vs. Abhishek Industries Ltd., wherein this Court held as under (pages 12, 13, 14):

As far as the issue of establishment of nexus of the funds borrowed vis-a-vis the funds diverted towards sister concern on interest-free basis is concerned, in our view, the stand of the assessee that the onus of proving the nexus of funds available with the assessee with the funds advanced to the sister concerns without interest is on the Revenue is not correct. Section 36(1)(iii) of the Act provides for deductions of interest on the loans raised for business purposes. Once the assessee claims any such deduction in the books of account, the onus will be on the assessee to satisfy the Assessing Officer that whatever loans were raised by the assessee, the same were used for business purposes. If in the process of examination of genuineness of such a deduction, it transpires that the assessee had advanced certain funds to sister concerns or any other person without any interest, there would be very heavy onus on the assessee to be discharged before the Assessing Officer to the effect that in spite of pending term loans and working capital loans on which the assessee is incurring liability to pay interest, still there was justification to advance loans to

sister concerns for non-business purposes without any interest and accordingly, the assessee should be allowed deduction of interest being paid on the loans raised by it to that extent. In our view, even the plea of nexus of loans raised by the assessee with the funds advanced to the sister concerns on interest-free basis, may be it is pleaded to be out of sale proceeds or share capital or different account cannot be accepted.

The entire money in a business entity comes in a common kitty. The monies received as share capital, as term loan, as working capital loan, as sale proceeds, etc., do not have any different colour. Whatever are the receipts in the business, that have the colour of business receipts and have no separate identification. Sources has no concern whatsoever. The only thing sufficient to disallow the interest paid on the borrowing to the extent the amount is lent to sister concern without carrying any interest for non-business purposes would be that the assessee has some loans or other interest bearing debts to be repaid. In case the assessee had some surplus amount which, according to it, could not be repaid prematurely to any financial institution, still the same is either required to be circulated and utilised for the purpose of business or to be invested in a manner in which it generates income and not that it is diverted towards sister concern free of interest. This would result in not presenting true and correct picture of the accounts of the assessee as at the cost being incurred by the assessee, the sister concern would be enjoying the benefits thereof. It cannot possibly be held that the funds to the extent diverted to sister concerns or other persons free of interest were required by the assessee for the purpose of its business and loans to that extent were required to be raised. We do not subscribe to the theory of direct nexus of the funds between borrowings of the funds and diversion thereof for non-business purposes. Rather, there should be nexus of use of borrowed funds for the purpose of business to claim deduction u/s 36(1)(iii) of the Act. That being the position, there is no escape from the finding that interest being paid by the assessee to the extent the amounts were diverted to sister concern on interest-free basis are to be disallowed.

If the plea of the assessee is accepted that the interest-free advances made to the sister concerns for non-business purposes was out of its own funds in the form of capital introduced in business, that again will show a camouflage by the assessee as at the time of raising of loan, the assessee will show the figures of capital introduced by it as a margin for loans being raised and after the loans are raised, when substantial amount is diverted to sister concerns for non-business purposes without interest, a plea is sought to be raised that the amount advanced was out of its capital, which in fact stood exhausted in setting up of the unit. Such a plea may be acceptable at a stage when no loans had been raised by the assessee at the time of disbursement of funds. This would depend on facts of each case....

Section 106 of the Indian Evidence Act or the principles analogous thereto places the burden in respect thereof upon the assessee, as the facts are within its special

knowledge. However, a presumption may be raised in a given case as to why an assessee who for the purpose of running its business is required to borrow money from banks and other financial institutions would be giving loan to its subsidiary companies and that too when it pays a heavy interest to its lenders, it would claim no or little interest from its subsidiaries.

Following the dictum of law laid down in Commissioner of Income Tax-I Vs. Abhishek Industries Ltd., we answer the question in favour of the Revenue and against the assessee.

Question No. (iii)

5. We have already considered an identical issue in I.T.A. No. 293 of 2005 Commissioner of Income Tax Vs. Vardhman Polytex Ltd., decided on May 22, 2006.

6. Accordingly, following the dictum of law laid down therein, we uphold the view taken by the Tribunal and answer the question against the Revenue and in favour of the assessee.

Question No. (iv)

7. This issue relates to disallowance of a sum of Rs. 2,10,142 spent by the assessee on purchase of watches, which were claimed to have been distributed amongst the employees on the occasion of Dewali. The claim was rejected by the Assessing Officer for the reason that, firstly, the assessee could not prove that the watches were actually distributed and, secondly, that there was no reason to give such costly gifts to the employees. However, the Commissioner of Income Tax (Appeals) as well as the Tribunal upheld the claim of the assessee as the watches were distributed amongst employees keeping in view their status and length of service which leads to harmonious relations between the management and the staff resulting in higher output and productivity. In this factual matrix counsel for the Revenue was not able to persuade this Court to take a view contrary to what has been taken by the Tribunal and further to show as to how the expense in question was not related with the business. Accordingly, the question is answered against the Revenue and in favour of the assessee.

Question No. (v)

8. As far this question is concerned, the contention raised on behalf of the Revenue is that the unit having been set up during the assessment year 1984-85, a period of 7 year to claim benefit u/s 80I of the Act, would expire in the assessment year 1991-92 and during the year in question, the assessee will not be entitled to claim this benefit. The finding recorded by the Tribunal permitting the benefit to the assessee u/s 80I of the Act during the year in question treating the same to be seventh year of production deserves to be set aside. On the other hand, the contention of learned Counsel for the assessee is that the Revenue had moved an application for rectification u/s 254(2) of the Act, which has been dismissed by the

Tribunal vide order dated October 13, 2003, but though the present appeal was filed thereafter, this fact has not been disclosed in the present appeal. He further states as per the spirit of the Act, an assessee is entitled to benefit of the deductions u/s 80I of the Act for 7 years and the assessee in the present case is also claiming the same for the period permissible. As far as the dispute regarding the assessment year 1984-85 is concerned, counsel for the assessee referred to and relied upon the findings recorded by the Tribunal while dealing with the rectification application to state that during the year 1984-85, the setting up of the plant itself was not complete, accordingly, there was no question of any production. Out of the total investment in machinery amounting to Rs. 5.70 crores, it was only about Rs. 1.09 crores which was spent during the assessment year 1984-85 and the fact to which the Revenue is terming to be production was mere receipt of a sum of about Rs. 1 lakh on account of job charges which were recovered during the process of testing of some machines installed. This cannot in any manner be termed to be setting up of the plant and start of manufacturing therefrom. It is further submitted that to enable the assessee to start production, industrial licence was required which itself was received by the assessee on March 23, 1985, relevant to the assessment year 1986-87. To sum up, he submitted that once setting up of the plant itself was completed in the assessment year 1986-87 and licence to manufacture was also granted during that year, there is no reason to deny the benefit of Section 80I of the Act to the assessee for 7 years starting therefrom.

9. We find the contention raised by counsel for the assessee, supported by the facts as narrated above, to be persuasive. Section 80I of the Act applies to any industrial undertaking which fulfils four conditions as laid down in Sub-section (2) thereof and one of them being the Act to manufacture or produce articles. It is not in dispute that the industrial undertaking could start manufacturing only after industrial licence is granted and in fact started manufacturing thereafter. It is also not in dispute that the assessee claimed deduction u/s 80I of the Act only during the year 1985-86 for the first time and not before that and calculating therefrom, the present assessment year will be the seventh year. This being the admitted position, we do not find any reason to differ with the view taken by the Tribunal. Accordingly, we dismiss the appeal of the Revenue on this issue.

The appeal is disposed of in the manner indicated above.