(2010) 07 P&H CK 0251

High Court Of Punjab And Haryana At Chandigarh

Case No: IT Ref. No''s. 322 and 323 of 1995

Commissioner of Income Tax	APPELLANT
Vs	
Punjab Chemi. Plants Ltd	RESPONDENT

Date of Decision: July 14, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 32(1), 80

Citation: (2010) 235 CTR 204

Hon'ble Judges: Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Judgement

Adarsh Kumar Goel, J.
Following questions of law have been referred for opinion of this Court u/s 256(1) of the IT Act, 1961 (for short, "the Act") by the Tribunal, Chandigarh, arising out of its order dt. 8th Jan., 1993 in ITA Nos. 792 and 793/Chd/1986 for the asst. yrs. 1980-81 and 1981-82 : In RA No. 46

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing depreciation to the assessee by treating it to be an industrial undertaking ?

3. Whether on the facts and the circumstances of the case, the Tribunal was right in law in allowing depreciation on foreign cars in view of the provisions of Section 32(1)(ii) ?

In RA No. 47

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing depreciation on all vehicles at foreign sites ?

5. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding the construction business as industrial undertaking and allowing

deductions under Sections 80J and 80HH when the different Courts have held contrary to that ?

2. Facts necessary for disposal of reference may be noticed.

The assessee is carrying on the business of construction and fabrication of mechanized houses in foreign countries. It used vehicles in foreign countries for transporting its employees or for procuring material and claimed depreciation on the use of said vehicles. The AO disallowed the said claim relying upon second proviso to Section 32(1)(ii) of the Act, which is to the following effect:

Provided further that no deduction shall be allowed under this clause or cl. (iii) in respect of any motor car manufactured outside India, where such motor car is acquired by the assessee after the 28th day of February, 1975, and is used otherwise than in a business of running it on hire for tourists;

3. The order passed by the AO was upheld by the CIT(A). However, on further appeal to the Tribunal, it was observed:

6. We have carefully considered the rival submissions as also the facts on record. We find substantial force in the arguments of Shri Jain. While interpreting a provision of fiscal statute, the speech of the mover of the Finance Bill and the contemporaneous evidence by way of Memorandum Explaining the Provisions contained in the Finance Bill, can certainly be gone into to ascertain the intention of the legislature. There is no doubt that the aforesaid provision was inserted with a view to curbing ostentatious expenditure on imported cars. This could, however, apply only to the cars which were imported to be used within the country. In such situation, there could be no ambiguity about the provisions of the aforesaid proviso. The assessee''s case, however, falls in a different category. If the aforesaid provision is liberally interpreted, then of course depreciation could not be allowed to the assessee in respect of the motor cars manufactured abroad. But on the facts of the present case, this could lead to anomalous results. The assessee would per force be compelled to take cars of Indian make abroad, involving prohibitive cost of transportation etc. with a view to claiming depreciation allowance. In fact, to a prudent businessman, this would be unthinkable and unacceptable. We, therefore, hold that the aforesaid proviso has to be interpreted liberally, even if the language of the same has to be slightly strained. In our opinion, user of cars of foreign make abroad for business purposes, would not involve any expenditure which could be termed as ostentatious or extravagant. We, therefore, hold that the assessee was entitled to depreciation on cars of foreign make used abroad for business purposes. This ground, therefore, succeeds.

4. The AO also disallowed claim for depreciation by not treating the undertaking of the assessee to be ''industrial undertaking''. The assessee also claimed deduction u/s 80J of the Act in respect of profits and gains from newly established industrial undertakings. The AO disallowed the said claim on the ground that a company

engaged in construction of civil works was not covered by the term ''industrial undertaking'' under Sections 80J and 80HH of the Act. Reliance was placed on judgment of the Gujarat High Court in Cellulose Products of India Ltd. Vs. Commissioner of Income Tax, Gujarat, . It was held that the undertaking of the assessee was not engaged in manufacture or production of articles or things'' as required u/s 80I(2)(iii) of the Act. On appeal, the CIT(A) upheld the plea of the assessee which was further affirmed by the Tribunal.

5. We have heard learned Counsel for the parties and proceed to adjudicate the questions referred.

Re. question 3 in RA No. 46 and question 2 in RA No. 47:

6. Learned Counsel for the assessee reiterates his submissions made before the CIT(A) that literal construction of the second proviso to Section 32(1)(ii) of the Act will lead to absurdity and should be avoided, as held by the Hon''ble Supreme Court in Mahadeo Prasad Rais v. ITO (1991) 98 CTR (SC) 230 : (1991) 4 SCC 560.

7. The provision was incorporated by the Finance Act, 1975 and the speech of the Finance Minister while pressing the Bill, as reported in 98 ITR 113, is as under:

With a view to curtailing obstentatious expenditure in business and professions, I propose to deny depreciation in respect of imported cars which was acquired after 28th Feb., 1975. Simultaneously, I propose to allow full depreciation in respect of indigenous cars, irrespective of their cost.

8. In view of above, it was submitted that the proviso should be held to be referable to cars imported and used in India and should not apply to cars used for business outside India when income was generated from the business activities outside India, as has been held by the Tribunal in the finding recorded above.

9. Learned Counsel for the Revenue submitted that on a literal interpretation of the second proviso to Section 32(1)(ii) of the Act, depreciation could not be allowed on imported cars.

10. On consideration of rival submissions, we are unable to accept the view put forward by learned Counsel for the Revenue. The speech of the Finance Minister clearly shows the purpose of exclusion by way of proviso of claims for depreciation of imported cars incorporated by the second proviso to Section 32(1)(ii) of the Act was not to deny depreciation on foreign cars used in foreign countries for business abroad. It cannot be denied that cars used for business abroad at a foreign site are eligible for claiming depreciation, but for the proviso. There is no justification to read the proviso as excluding the said benefit which is otherwise a legitimate claim. In the facts and circumstances of the case, the claim of the assessee for depreciation on foreign cars used at foreign sites for its business is clearly admissible. We, accordingly, decide these questions against the Revenue and in favour of the assessee.

Re. question 2 in RA No. 46 and question 5 in RA No. 47:

11. Claim u/s 80J of the Act is admissible if the profit is earned from a newly established eligible industrial undertaking. The term industrial undertaking'' has been defined u/s 80-I of the Act. The relevant conditions therein are specified in Section 80-I(2)(iii) of the Act i.e. an undertaking engaged in manufacture or production of articles or things. The activity of the assessee, as already mentioned above, is construction and fabrication of mechanized houses, which cannot be equated to manufacture and production of articles or things. Reference may be made to judgment of the Hon''ble Supreme Court in CIT v. N.C. Budharaja & Co. and Anr. (1993) 114 CTR 420 (SC) : (1993) 204 1TR 412 , holding:

...If a dam is an article, so would be a bridge, a road, an underground canal and a rnultistoreyed building. To say that all of them fall within the meaning of the word ''articles'' is to overstrain the language beyond its normal and ordinary meaning. It is equally difficult to say that the process of constructing a dam is a process of manufacture or a process of production. It is true that a dam is composed of several articles; it is composed of stones, concrete, cement, steel and other manufactured articles like gates, sluices etc. But to say that the end product, the dam, is an article is to be unfaithful to the normal connotation of the word. A dam is constructed; it is not manufactured or produced. The expressions ''manufacture'' and ''produce'' are normally associated with movables-articles and goods, big and small-but they are never employed to denote the construction activity of the nature involved in the construction of a dam or for that matter a bridge, a road or a building.

12. Learned Counsel for the assessee has not been able to distinguish the applicability of the above observations to the facts of the present case. Accordingly, the questions referred have to be answered in favour of the Revenue and against the assessee. The assessee was not entitled to deduction under Sections 80J and 80HH of the Act.

The reference is disposed of.