

(2010) 12 P&H CK 0536

High Court Of Punjab And Haryana At Chandigarh

Case No: Income Tax A. No. 274 of 2006

Commissioner of
Income Tax

APPELLANT

Vs

National Hydroelectric
Power Corporation
Ltd.

RESPONDENT

Date of Decision: Dec. 17, 2010

Acts Referred:

- Income Tax Act, 1961 - Section 260A

Citation: (2011) 332 ITR 322

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

Adarsh Kumar Goel, J.

This appeal has been preferred by the Revenue u/s 260A of the income tax Act, 1961 against the order of the income tax Appellate Tribunal, Delhi Bench "F" passed in I. T. A. No. 1496/Delhi/2003 dated October 27, 2004, for the assessment year 1998-99, claiming the following substantial question of law:

Whether the hon"ble income tax Appellate Tribunal has erred in law in confirming the order of the Commissioner of income tax (Appeals) in deleting the disallowance of depreciation of Rs: 585.75 lakhs claimed by the Assessee on capitalization of the effect of the fluctuation in the rate of foreign exchange on the outstanding liability, though no amount was actually paid during the year ?

2. The Assessing Officer partly disallowed the claim for depreciation calculated on the basis of increased value of the assets of the Assessee on account of fluctuation of foreign exchange rates. On appeal, the Commissioner of income tax (Appeals) upheld the plea of the Assessee as follows:

4.3 From the above judgment of the Special Bench of Delhi, income tax Appellate Tribunal, it is clear that change in the value of asset because of fluctuation in foreign currency is not a contingent liability. The Appellant-company is following the mercantile system of accounting and following the accounting standard issued by ICAI. The Chamera project has already started the operation and the assets of the project are in use. Therefore, keeping the aforesaid facts and the legal position as enunciated by the Delhi income tax Appellate Tribunal (Special Bench) the Assessing Officer was not justified in disallowing the claim of the Appellant and accordingly the disallowance of Rs. 585.75 lakhs made by the Assessing Officer is hereby deleted. The Appellant succeeds on this ground.

3. The Tribunal affirmed the said finding.

4. We have heard learned Counsel for the parties.

5. Learned Counsel for the Revenue does not dispute that the view taken by the Tribunal is in consonance with the view taken by the hon"ble Supreme Court in [Commissioner of Income Tax, Delhi Vs. Woodward Governor India P. Ltd.](#), and Oil and Natural Gas Corporation Ltd. v. CIT (2010) 322 ITR 180. Following earlier judgment in [Commissioner of Income Tax, Gujarat Vs. Arvind Mills Ltd.](#), it was held that increase or decrease in liability in the repayment of foreign loan should be taken into account to modify the figure of actual cost in the year in which the increase or decrease in liability arises on account of fluctuation in the rate of exchange. This has to be done irrespective of the date of actual payment in foreign currency.

6. In view of the above, the question claimed on behalf of the Revenue is answered against the Revenue.

7. The appeal is dismissed.