(2008) 214 CTR 357 : (2009) 310 ITR 283

Allahabad High Court

Case No: None

Commissioner of Income Tax		APPELLANT
	Vs	
Sir Shadi Lal Enterprises Ltd.		RESPONDENT

Date of Decision: April 9, 2007

Acts Referred:

- Income Tax Act, 1961 - Section 244(1A), 256(1)

Citation: (2008) 214 CTR 357 : (2009) 310 ITR 283

Hon'ble Judges: R.K. Agrawal, J; Bharati Sapru, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

1. The Tribunal, Delhi, has referred the following questions of law u/s 256(2) of the IT Act, 1961 (hereinafter referred to as the Act) for opinion of this Court:

1. Whether the Tribunal was justified in deleting the addition of Rs. 1,52,565 on account of closing stock of Bagasses ?

2. Whether the Tribunal was legally justified in restricting the disallowance at 30 per cent out of guest house expenses of Rs. 55,629 ?

3. Whether the Tribunal was legally justified in directing the AO to cancel the interest of Rs. 3,64,734 levied u/s 220(2) ?

2. The reference relates to the asst. yr. 1986-87.

Briefly stated, the facts giving rise to the present reference are as follows:

The assessee company is engaged in manufacturing of sugar, country liquor as well as Indian made foreign liquor in its factory at Shamli. On scrutiny of accounts submitted by the assessee for the asst. yr. 1986-87, for which previous year ended on 30th Sept., 1985, the AO noticed that the assessee did not disclose any value of 7,265 bales of Bagasses. On query, it was stated before him that Bagasse was meant for initial fuel and not for sale. It was further stated that for the purposes of valuation, there is no further cost of Bagasse in the hands of the assessee company except for cost of wire used for baling and labour charges, which have been duly accounted for. The assessee followed this practice consistently in earlier years which has been accepted. It was argued before the AO that he had no right to deviate from consistent practice accepted by the Department. The AO did not accept the assessee''s contention. According to him, the Bagasses, which remained unconsumed, was closing stock available with the assessee as a by-product which has a market value. On the basis of purchases of Bagasses made by M/s Babri Paper Mills, he valued the closing stock of Bagasses @ Rs. 700 per m.t. and made the impugned addition. The assessee challenged this addition before the CIT(A) and reiterated the same arguments which were advanced before the learned AO. The CIT(A) observed that the principle of res judicata did not apply to Income Tax proceedings. He did not agree with the view of the assessee that Bagasse was a waste. On the other hand, he noticed that the assessee himself utilized the Bagasse as fuel and occasionally purchased it from the market. He therefore, held that Bagasse had some value and had to be treated as an integral part of the closing stock. He, however, felt that it would be reasonable to value the closing stock @ Rs. 360 per m.t. being the prevailing price. He accordingly reduced the addition. Aggrieved by the learned CIT(A)''s decision, the assessee was in appeal before the Tribunal. The Tribunal after considering the rival submissions of the parties, held that the assessee does not normally sell the Bagasses but utilizes the same as fuel. The assessee had been consistently valuing the bales of Bagasses on direct cost method on its baling charges and cost of wires. This system of valuation has been followed in the year of accounting also and this was evident from the fact that the assessee had disclosed its value at Rs. 7,557 in its books under the head "stores and spares". It is now well-settled that closing stock has to be valued at cost or market price whichever is lower. According to the assessee it has been valuing its closing stock of Bagasses at cost. The assessee did not purchase any Bagasse in year of account. The Bagasses was assessee''s by-product and except for cost of baling and cost of wires disclosed by the assessee at Rs. 7,557, no other expenditure was incurred. No material has been brought on record to prove that 7,265 bales which remained in the closing stock in the year of account, cost more than what has been disclosed by the assessee itself. The Tribunal accordingly held that cost to the assessee could not be substituted by cost to any other assessee for evaluation of closing stock. In above view of the matter, the Tribunal saw no justification for upholding impugned addition for undervaluation of closing stock of Bagasses. Accordingly the addition was deleted.

3. The facts relating to question No. 2 are that AO disallowed Rs. 62,291 as guest-house expenses. This disallowance was made out of guest house expenses, depreciation and

repair and maintenance of the guest house. On appeal, learned CIT(A) confirmed the disallowance. This was done by him following the order of his predecessor for the asst. yr. 1985-86. The assessee then brought the issue in appeal before the Tribunal and submitted that the Tribunal has consistently held that expenditure on account of providing food, etc. to the employees may be disallowed at 30 per cent of the claim. In support of above, Tribunal''s order in ITA No. 6047/Del/1988 and CO. No. 288/Del/1989, dt. 18th Feb., 1991 read with M.A. No. 97/Del/1991, dt. 6th Nov., 1991 were cited. The Tribunal following earlier orders cited before it, held that 30 per cent of the claim may be disallowed out of guest house expenses on providing food, etc. to the employees of the company. The Tribunal directed accordingly.

4. The facts relating to question No. 3 are that the assessee was allowed refund of Rs. 14,23,356 u/s 141A on 15th April, 1987 while on regular assessment, huge amount of tax demand was created and nothing was refundable to the assessee. Initially, the refund allowed was adjusted against demand for asst. yr. 1984-85, but due to appeal effect, substantial amount was refundable on which interest of Rs. 7,77,991 was also allowed u/s 244(1 A) of the Act. The interest was also allowed on amount of Rs. 14,23,356 for the period from 15th April, 1987 to the date of actual refund. The AO, therefore, held that the assessee is liable to pay interest u/s 220 on the amount of refund which was not actually due to the assessee. He accordingly charged interest amount to Rs. 3,64,734 for the period 15th April, 1987 to 31st Jan., 1989 @ 15 per cent per month. The assessee challenged the levy of above interest in appeal before the CIT(A). The learned CIT(A) for the reasons given in paras 31 to 34 of his appellate order confirmed the order of the AO. The assessee then brought the issue in appeal before the Tribunal.

The Tribunal after considering the submissions of both the parties and relevant provisions of Sections 220(2) and 144A of the Act held that the assessee would be in default only after service of notice u/s 156 and then only will be liable to pay interest u/s 220(2) of the Act. The Tribunal further held that it was a fact that the assessee had paid excess prepaid taxes to the tune of Rs. 14,40,561 which were refundable to it after making of provisional assessment u/s 141A of the Act. On completion of regular assessment, notice u/s 156 of the Act was served on the assessee on 18th Feb., 1989 demanding tax along with interest at Rs. 51,01,368. The AO would have been justified in charging interest u/s 220(2) of the Act if the assessee had defaulted in making the payment of above demand. However, there was no warrant for him to relate back the levy of interest u/s 220(2) of the Act from the date of refund issued as a result of provisional assessment u/s 141A of the Act. In above view of the matter, the Tribunal held that Revenue authorities were not justified in charging interest u/s 220(2) of the Act. The same was cancelled.

We have heard Sri A.N. Mahajan, learned standing counsel appearing for the Revenue and Sri S.D. Singh, learned Counsel appearing for the respondent assessee.

5. Sri A.N. Mahajan, learned standing counsel submitted that admittedly the assessee has not shown closing stock'' of Bagasse which is a by-product and according to him

Bagasse has some value which ought to have been shown in the closing stock. The Tribunal has erred in deleting the addition made on account of closing stock of Bagasse. He further submitted that in view of the specific provisions of Sub-sections (3), (4) and (5) of Section 37 of the Act, the Tribunal was justified in restricting the disallowance at 30 per cent out of guest-house expenses of Rs. 55,629. In support of his aforesaid submissions he relied upon a decision of the apex Court in the case of Britannia Industries Ltd. Vs. Commissioner of Income Tax, West Bengal, Kolkata and Another, . He further submitted that as the assessee had deposited the tax less than what was ultimately assessed by the assessing authority, the interest u/s 220 of the Act has rightly been levied.

6. Sri S.D. Singh, learned Counsel appearing for the respondent-assessee, however, submitted that admittedly the assessee has not sold the Bagasse and it has been using the same as fuel. According to him as there is no sale of Bagasse at the hands of the assessee the valuation of closing stock of the assessee company cannot be made especially when in the year of account the assessee did not make any sale of Bagasse in the market. It did not make any difference whether the valuation of closing stock of Bagasse has been given by the assessee or not as it has been used as fuel and the corresponding value of closing stock of Bagasse is taken into consideration. So far as the guest house expenses is concerned, he submitted that the assessee had been maintaining guest house for lodging and boarding of its employees. The expenses towards lodging and boarding has not been incurred towards maintenance of the guest-house and, therefore, the Tribunal was justified in restricting the disallowance at 30 per cent out of guest house expenses of Rs. 55,629. In support of his aforesaid submissions he relied upon a decision of the Madras High Court in the case of Commissioner of Income Tax Vs. South India Viscose Ltd., So far as levy of interest u/s 220(2) of the Act is concerned he submitted that notice of tax u/s 156 of the Act was served upon the assessee on 18th Feb., 1989 and only after expiry of the period provided in the notice u/s 156 of the Act, the interest would start running and in the present case the period prior to the service of notice u/s 156 of the Act cannot be taken into consideration for levy of interest. He relied upon an order of this Court in IT Appln. No. 259 of 1995 decided on 15th Sept., 1999 which is inter-parties in which this Court has declined to call for a similar question in respect of the asst. yr. 1987-88.

7. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties and we find that in respect of the valuation of the closing stock of Bagasse the assessee has all along been valuing it at the cost or market price whichever is lower. The assessee had not disclosed the closing stock of Bagasse as it was not being sold by it in open market and it is only used as fuel. The valuation of the closing stock of Bagasse would not have made any difference for the simple reason that the assessee was using it as fuel. If the valuation of closing stock of Bagasse was taken into consideration the corresponding deductions for it would be available to the assessee while determining the cost of fuel used by it. Thus, in any event, the Tribunal was justified in coming to conclusion that the valuation of the closing stock shown at the cost price was

correct.

8. So far as the question of disallowance of guest house expenses is concerned, we find that the assessee had not given a detailed break-up and it had only claimed guest house expenses at Rs. 50,289 and repairs at Rs. 5,000 apart from claiming depreciation including workers welfare expenses. Under Sub-sections (4) and (5) of the Section 37 of the Act, expenditure on the maintenance of any residential accommodation in the nature of guest house has to be disallowed. Providing of lodging or boarding and lodging to any person including any employee on tour or visit to the place at which such accommodation is situated is also treated as accommodation in the nature of a guest house. It is not in dispute that the guest-house which the assessee is maintaining is in the nature of guest house as the assessee has its units at Shamli and Pilkhani. Any expenditure incurred even on employees in the guest house in the form of lodging or boarding on tour or visit to a place at which such accommodation is situated, is also liable to be disallowed as if treated as an accommodation in the nature of guest house in view of Sub-section (5) of Section 37 of the Act. Thus the entire expenses have to be treated as an expenditure on guest house which is not allowable in view of Sub-section (4) of Section 37 of the Act. The reliance placed by the learned Counsel on the decisions of South India Viscose Ltd. (supra) is wholly misplaced. It was dealing with a case of maintenance of a guest house and as to whether the rent paid for guest house would be admissible for deduction or not. The Madras High Court has held that the rent paid for the guest house cannot be regarded as part of the maintenance. The word "maintenance" refers to upkeep of the house and it has also been taken into consideration that any amount, which is paid, is for its existence. Thus, the Tribunal was not justified in restricting the disallowance at 30 per cent in respect of guest house expenses.

9. So far as the levy of interest u/s 220(2) of the Act is concerned, we find that admittedly, in the present case notice u/s 156 of the Act was served upon the assessee on 18th Feb., 1989. Interest under Sub-section (2) of Section 220 starts running after the amount remains unpaid. As the notice was served upon the assessee on 18th Feb., 1989, there is no liability for payment of interest prior to that date. The Tribunal has rightly cancelled the levy of interest u/s 220(2) of the Act.

10. In view of the foregoing discussions, we answer the question Nos. 1 and 3 referred to us in the affirmative i.e. in favour of the assessee and against the Revenue. So far as the second question is concerned, that is answered in the negative, i.e. in favour of the Revenue and against the assessee. There will be no order as to costs.