Asstt. Commissioner of Income Tax Vs Ravi Construction

Court: Gujarat High Court

Date of Decision: Dec. 22, 2014

Acts Referred: Income Tax Act, 1961 â€" Section 32, 32(1)(ii)

Hon'ble Judges: Kaushal Jayendra Thaker, J; K.S. Jhaveri, J

Bench: Division Bench

Advocate: Sudhir M. Mehta, Advocates for the Appellant; Manish J. Shah, Advocates for the Respondent

Judgement

K.S. Jhaveri, J.
This is an appeal by the appellant-Revenue, seeking to challenge the order of the learned ITAT, Ahmedabad Bench "C"

(for short, "the Tribunal"), Dated : 01.02.2002, rendered in ITA No. 2405/AHD/1996 for the A.Y. 1991-92, whereby, the Tribunal dismissed the

appeal of the Revenue.

2. The brief facts of the case are that the Respondent-assessee, filed its return of income on 15.05.1992, declaring total income at Rs. 11,90,459/-

. Pursuant thereto, the case of the assessee was examined and the concerned AO, after making certain additions/disallowances, assessed the

income of the assessee at Rs. 21,44,109/-. The assessee, hence, approached the CIT(A), who partly allowed its appeal. Being aggrieved with the

same, the Revenue approached the Tribunal by way of appeal, wherein, the Tribunal passed the impugned order, as referred to in Para-1, herein

above. Hence, the present appeal.

3. At the time of admitting the present appeal, this Court framed the following questions of law;

(1) Is centering material to be viewed as ""block of assets"" for the purpose of allowing deduction in respect of depreciation under section 32(1)(ii)

of the Income-tax Act, 1961?

(2) Is depreciation allowable at the rate of 100% on the centering material as against normal rate of depreciation at 33.1/3% for plant and

machinery?

4. Mr. Mehta, learned Advocate for the appellant-Revenue, submitted that the Tribunal erred in passing the impugned order, inasmuch as it failed

to appreciate the material on record in its proper perspective. He submitted that the CIT(A) and the Tribunal ought to have held that the AO was

justified in disallowing the claim of the assessee for 100 per cent depreciation. He, further, submitted that the Tribunal ought to have followed the

latest decision on the subject matter.

5. In support of his case, Mr. Mehta placed reliance on a decision of the Andhra Pradesh High Court in ""CIT VS. VIJAYA ENTERPRISE"" and

the allied matters, [2011] 332 ITR 235 (AP) wherein, the Andhra Pradesh High Court, defining the term ''construction industry'', observed that

each item of shuttering material does not form the plant and thereby held that the assessee, therein, was not entitled to 100 per cent depreciation

under First Proviso to Section 32(1)(ii) of the Income Tax Act, 1961. He, therefore, prayed that the present appeal be allowed.

6. On the other hand, Mr. Shah, learned Advocate for the assessee, supported the orders of the learned CIT(A) as well as the Tribunal and

submitted that the Tribunal committed no error in confirming the order of the CIT(A). In support of his submissions, Mr. Shah placed reliance on

the following decisions;

The Commissioner of Income Tax Vs. Alagendran Finance Limited, ;

Commissioner of Income Tax Vs. Mohta Construction Company, ;

Commissioner of Income Tax Vs. Dhall Enterprises and Engineers (P) Ltd.,

Commissioner of Income Tax Vs. M/s Ansal Housing Finance and Leasing Co. Ltd.,

7. Mr. Shah relying on the decision of this Court in ""CIT VS. DHALL ENTERPRISES AND ENGINEERING P. LTD."", submitted that this

Court, in Paras-12 & 13 of the aforesaid decision, observed and held as under:

12. It is settled position in law that proviso is normally used as a legislative tool to carve out an exception from the main provision which precedes

the proviso. The first proviso makes it clear that in case of the machinery or plant whose actual cost does not exceed the specific monetary ceiling,

such asset would not enter the block of assets and hence, there would be no occasion to work out such percentage of the written down

value/actual cost. If the view canvassed by the revenue is accepted, this would go against the legislative intent.

13. There is one more reason. The third proviso itself requires to restrict the depreciation allowance at 50 % of the amount calculated at the

percentage prescribed under clause (ii) of Section (1) of Section 32 of the Act. As already noticed, the asset does not enter the block of assets

and hence, there is no question of working out the prescribed percentage. Therefore, on this count also the third proviso cannot be invoked and

applied because it does not talk of restricting the value at 50 % of the actual cost.

8. In the case on hand, while dismissing the appeal of the Revenue, the Tribunal observed that the CIT(A) had allowed depreciation at 100 per

cent by placing reliance on the decision of the Delhi High Court in Commissioner of Income Tax Vs. National Air Products Limited, and that of

ITAT, Delhi Bench, in ""AUNSAL CONSTRUCTION VS. IAC"", 36 TTJ 26. Admittedly, the facts of the case on hand and that of the decisions

relied on by the CIT(A) are identical in nature and the aforesaid fact is not disputed by Mr. Mehta, learned Advocate for the appellant-Revenue.

Under the circumstances, in view of the decision of this Court in ""CIT VS. DHALL ENTERPRISES AND ENGINEERING P. LTD."", we are of

the view that the decision relied on by Mr. Mehta in the case of ""CIT VS. VIJAYA ENTERPRISE"" (Supra) would not help the case of the

Revenue and we hold that the Tribunal was justified in confirming the order of the CIT(A), allowing 100 per cent depreciation to the assessee.

9. In the result, present appeal fails and is DISMISSED, as being without merit. The questions of law framed in this appeal, i.e. (1) Is centering

material to be viewed as ""block of assets"" for the purpose of allowing deduction in respect of depreciation under section 32(1)(ii) of the Income-

tax Act, 1961? and (2) Is depreciation allowable at the rate of 100% on the centering material as against normal rate of depreciation at 33.1/3%

for plant and machinery?, are answered AGAINST the appellant-revenue and in FAVOUR of the respondent-assessee, accordingly. No order as

to costs.