(2013) 12 AP CK 0011

Andhra Pradesh High Court

Case No: R.C. No. 124 of 1996

The Commissioner of Income Tax, Hyderabad		APPELLANT
	Vs	
M/s. Warner Hindustan Ltd.		RESPONDENT

Date of Decision: Dec. 5, 2013

Citation: (2014) 364 ITR 208

Judgement

@JUDGMENTTAG-ORDER

Challa Kodanda Ram, J.
At the instance of the Revenue, the Income Tax Appellate Tribunal, Hyderabad Bench-''B'' had referred the following questions of law:

1. Whether, on the facts and circumstances of the case, the ITAT was correct in law in allowing higher rate of depreciation of 10% on ''creche building'' to the assessee for the Assessment years 1983-84 to 1985-86?

2. Whether, on the facts and in the circumstances of the case, the ITAT was correct in law in allowing the assessee''s claim of liability for the assessment years 1984-85 under the Drugs (Price Control) Order Act, 1979?

3. Whether, on the facts and in the circumstances of the case, the ITAT was correct in law in holding that the assessee''s claim of liability for assessment years 1984-85 and 1985-86 under the Drugs (Price Control) Order Act, 1979 was a statutory liability and as such is allowable?

2. In this case, in the assessment for the assessment year 1983-84 to 1985-86, the assessee claimed depreciation at the rate of 10% on the Creche Building which the Assessing Officer allowed at 21/2% by treating it as non-factory building. The Commissioner of Income tax (Appeals) declined to interfere with the same by following his order for assessment year 1982-83. The assessee''s case was that the creche is situated within the premises of the factory and, therefore, the same should

be classified as a business asset and as a factory building and as such entitled to higher rate of depreciation. This claim was allowed by the Tribunal in assessment year 1982-83 following which it had allowed for the years under consideration.

3. For the assessment years 1984-85 and 1985-86, the assessee claimed deductions representing the deposit made by them towards Drugs Price Equalization Account (for short, the "DPEA"), as a liability under Drug Price Control Order, 1979 (for short "the "DPCO"). This deposit was made by the assessee for over charged price of medicine manufactured by the assessee, over and above the price fixed by the Government under the DPCO. The provision has been made by the company on receiving the letter dated 04.05.1984 from the authorities that the assessee had violated provisions of DPCO and as such they could proceed to take action for contra version of the same. Further, by letter dated 06.01.1987, the assessee was informed that it had over charged the prices of drugs manufactured by it and directed the assessee to deposit the excess amount in DPEA. The assessee disputed the allegations. But, however, as a matter of precaution paid certain amounts which was not accepted by the Government. Assessee approached the High Court and finally assessee had deposited a sum of Rs. 55.49 lakhs which in fact assessee had paid by 11.05.1990. The view of the authority was that the provision which is made by the assessee which came to be deposited that DPEA is at best a contingent liability and not a statutory liability and as such not allowable as a deduction. The Tribunal for the assessment year 1982-83 in I.T.A. No. 567/Hyd/1987 vide its order dated 26.12.1989 upheld the contention of the assessee and after detailed analysis of the DPCO had held the liability fastened on the assessee on account of selling the specified drugs other than at the prices notified under the DPCO is in the nature of a statutory liability and is not a penalty and as such the same is allowable deduction.
4. None appeared for the assessee.

5. Heard the learned standing counsel for the Income Tax Department.

6. With regard to the 1st question, the Tribunal followed its own decision for the assessment year 1982-83 in I.T.A. No. 567/Hyd/87 and allowed depreciation @ 10% on the creche building. There is no challenge to the order of the Tribunal for the assessment year 1982-83.

7. The building used for creche is considered to be part of factory building and high rate of depreciation was allowed. The expression of "factory building" was not defined in the Act or in the Rules. Thereby, the ordinary dictionary meaning of the word ''factory'' will have to be taken. The buildings referred in the Act are building which are used for the purposes of business or profession of the assessee. Such user may relate to manufacture or storage or even the welfare of the employees employed in the business or profession of the assessee. The Courts have extended the scope of factory building to sports pavilions and workers, canteens, roads inside the housing colonies, drainage and compound walls of petrol pumps, fencing,

culverts and drainage within a factory compound. All these assets are held to be entitled at a high rate of depreciation than that were allowed on the simple buildings.

8. It is not in dispute that the creche building is situated within the same compound of the factory where the assessee carries on manufacturing activity. For the purpose of increasing efficiency, productivity of the women employees were engaged in the factory, creche is created by the assessee in a separate building. In other words, the creche building is being utilized in the process of manufacturing of the products. Considering the importance of the creche building, the creche building is included as one of the business asset which is allowable for granting of depreciation. In this context, it may also be noted that the assessee is being assessed under the head of income from business. In that view of the matter, the order of the Tribunal in allowing the depreciation at 10% treating the creche building as a business asset cannot be found fault.

9. With respect to controversy regarding the excess prices recovered and deposited with DPEA as a deduction, a few undisputed facts need to be noted.

10. The Tribunal has recorded that by May, 1990, assessee had paid an amount of Rs. 55.49 lakhs to the Government on account of the excess amounts charged for the Tablets Iskin 300 Mg., and Pyridium over and above the prices fixed in DPCO. During the relevant period, the assessee made a claim for deduction of these amounts for the purpose of computing the total income which were disallowed by the assessing officer. The Tribunal had analyzed the DPCO issued under the Essential Commodities Act and finally came to the conclusion that the excess amounts collected in disregard of the DPCO price is burdened with a corresponding obligation of depositing the same in DPEA. The relevant provisions of DPCO does not leave any option to the assessee to retain the excess amounts collected. Liability under the provisions of DPCO is fastened on the assessee the moment the sales are made at a price exceeding the price prevailing on the date of introduction of DPCO. Merely because the assessee though challenged the liability by filing a writ petition in the High Court of Mumbai, the liability itself does not get obliterated as the liability is in fact on account of a statutory control order issued in exercise of the powers vested in the Government under the Essential Commodities Act. In fact, the Tribunal had taken the same view and had come to a conclusion after detailed analysis of the provisions of DPCO that the liability imposed on the assessee with respect to excess amounts collected over and above the prices notified in DPCO are of the statutory nature. The Tribunal also followed the ratio laid down by the Supreme Court in Kedarnath Jute Manufacturing Co., vs. Commissioner of income tax 1982 ITR 363 whereunder the Supreme Court had analyzed a similar control order issued under the Essential Commodities Act viz., Levy Sugar Supply (Control) Order, 1972. In our considered opinion, the ratio of the law laid down by the Supreme Court in the said case squarely applicable and there are no valid reasons to

take a contra view in this case.

11. The Tribunal also followed the judgment of this Court in Commissioner of Income Tax, Andhra Pradesh Vs. Chodavaram Co-operative Sugars Ltd., wherein similar circumstances under the Levy Sugar Control Order, this Court took the view that the excess amounts collected over and above the statutory control order cannot be treated as a trading receipt and the assessee is entitled for deduction of the same as per the mercantile system. In these circumstances, all the questions are answered in favour of the assessee and against the revenue.

12. Accordingly, the Referred Case is disposed of. No order as to costs. Miscellaneous Petitions, if any, pending in this R.C. shall stand closed.