Commissioner of Income Tax Vs J.J. Leasing and Hiring Ltd.

Court: Calcutta High Court

Date of Decision: Dec. 2, 2013

Citation: (2014) 266 CTR 588

Hon'ble Judges: Indira Banerjee, J; Anindita Roy Saraswati, J

Bench: Division Bench

Judgement

Indira Banerjee, J.
The short question involved in this appeal is, whether the respondent assessee is entitled to claim investment allowance

under s. 32A of the IT Act, 1961, on the value of bottle washer machine, leased out by the assessee, as part of its business, and even assuming

that the assessee is so entitled, whether the learned Tribunal could have, in the facts and circumstances of the case, rectified and recalled its earlier

order in the appeal, confirming disallowance of investment allowance on the machine. The respondent assessee carries on business, inter alia, of

leasing and hiring out plant, machinery, equipment, vehicles etc. The assessee filed its IT return for the asst. yr. 1989-90 inter alia claiming

investment allowance under s. 32A of the IT Act @ 20 per cent of Rs. 7,36,650, that is, the value of bottle washer machine.

2. An order of assessment was passed under s. 143(3) of the IT Act, rejecting the claim of the respondent assessee to investment allowance on

bottle washer machine. The appeal filed by the assessee before the CIT(A) was dismissed.

3. The assessee filed an appeal before the Tribunal. The learned Tribunal confirmed the order of the CIT(A), relying on the judgment of the

Supreme Court in Commissioner of Income Tax, Lucknow Vs. Narang Dairy Products, Lucknow, .

4. In CIT vs. Narang Dairy Products (supra) the Supreme Court held that under s. 33(1)(a) of the IT Act, 1961, development rebate was only

allowed in respect of new machinery and plant, which was owned by the assessee and was wholly used for the purpose of business carried on by

the assessee.

5. The assessee filed a miscellaneous application under s. 254(2) of the IT Act praying for rectification of the order of the learned Tribunal, relying

on judgment of the Supreme Court in Commissioner of Income Tax, Karnataka, Bangalore Vs. M/s. Shaan Finance (P) Ltd., Bangalore, where

the Supreme Court, upon consideration of sub-s. (2)(b) of s. 32A of the IT Act, came to the conclusion that the relevant provision does not

specify that the assessee himself should use the machinery for claiming deduction.

6. In CIT vs. Shaan Finance (P.) Ltd. (supra) the Supreme Court held that where the business of the assessee consisted of hiring out machinery

and/or where the income derived by the assessee from the hiring of such machinery, was business income, the assessee must be considered as

having used the machinery for the purpose of its business. Therefore, a leasing or finance company, which leased out machinery owned by it, to

third parties, who used the machinery for manufacture of articles or things as specified in s. 32A(2)(b)(iii) would be entitled to investment

allowance in respect of such machinery under s. 32A of the IT Act.

7. Having regard to the judgment of the Supreme Court in Shaan Finance (P.) Ltd. (supra), the learned Tribunal was pleased to allow the

miscellaneous application filed by the assessee and recall its earlier order in part, insofar as the same confirmed the disallowance of investment

allowance. The registry was directed to fix the appeal for hearing on the limited issue of admissibility of deduction under s. 32A of the IT Act.

8. The Revenue has challenged the order of the learned Tribunal allowing the miscellaneous application inter alia contending that the appeal having

earlier been disposed of, the miscellaneous application could not have been entertained.

9. Mr. Bhowmik appearing on behalf of the petitioner submitted that the appeal was finally decided by the learned Tribunal in favour of the

Revenue and against the assessee by its order dt. 13th Aug., 1997. There were no grounds for recalling the order.

10. Mr. Bhowmik submitted that there were contradictory decisions of the Supreme Court on the issue of admissibility of a claim in a case like this.

The issue was, therefore, a debatable one, according to Mr. Bhowmik.

11. Mr. Bhowmik argued that rectification ought not to have been allowed when the issue was debatable. In support of his submission, Mr.

Bhowmik cited Jiyajeerao Cotton Mills Ltd. Vs. Income Tax Officer, ""C"" Ward and Others, .

12. Mr. Bhowmik submitted that the learned Tribunal has in effect and substance reviewed its order. Relying on the judgment of the Orissa High

Court in Commissioner of Income Tax Vs. Jagabandhu Roul, . Mr. Bhowmik submitted that the learned Tribunal does not have power of review.

13. Controller of Estate Duty Vs. V.G. Badamia, a Division Bench of Bombay High Court relying on the decision of the Supreme Court in

Controller of Estate Duty, Madras Vs. C.R. Ramachandra Gounder, held that the learned Tribunal had power to rectify its own mistake.

14. In Assistant Commissioner, Income Tax, Rajkot Vs. Saurashtra Kutch Stock Exchange Ltd., the Supreme Court affirmed that the Tribunal

had jurisdiction to rectify a mistake apparent on record.

15. The issue of whether the learned Tribunal could have rectified its mistake, is settled by the judgment of the Supreme Court in Asstt. CIT vs.

Saurashtra Kutch Stock Exchange Ltd. (supra). The admissibility of the claim of the assessee to investment allowance under s. 32A of the IT Act,

in a case like this, has been decided in favour of the assessee and against the Revenue in Shaan Finance (P.) Ltd. (supra).

16. The judgment of the Supreme Court in Shaan Finance (P.) Ltd. (supra) relates directly to s. 32A of the IT Act, which was in issue in the case

of the assessee, Mr. Bhowmik''s submission, that the issue was debatable, cannot be accepted.

17. An order, which is contrary to a judgment of the Supreme Court, is patently erroneous. When the Supreme Court renders a decision

enunciating a principle of law, it is assumed that, what was enunciated by the Supreme Court, was in fact, the law from the inception.

18. We are, thus, constrained to hold that the learned Tribunal was justified in recalling its earlier order. The appeal is thus dismissed.