(2000) 04 CAL CK 0028

Calcutta High Court

Case No: IT Ref. No. 69 of 1994 25th April 2000

COMMISSIONER OF INCOME TAX		APPELLANT
	Vs	
GENERAL FIBRE DEALERS (P) LTD.		RESPONDENT

Date of Decision: April 25, 2000

Acts Referred:

- Income Tax Act, 1961 - Section 145, 28, 36

Citation: (2000) 164 CTR 396

Hon'ble Judges: Y. R. Meena, J; Ranjan Kumar Mazumdar, J

Bench: Full Bench

Advocate: Mullick, for the Revenue and Khaitan, for the Assessee, for the Appellant;

Judgement

Y. R. Meena, J.

On an application u/s 256(1) of the Income Tax Act, 1961, Tribunal has referred some questions at the instance of the assessee set out in para 3 of the statement of case which reads as under :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that gratuity liability, ascertained on actuarial basis was not ascertained on scientific basis and whether Tribunal''s finding is perverse and contrary to facts ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that gratuity provisions based on actuarial valuation and as approved by the Board of Directors and shares holders was not allowable u/s 28 or section 36 read with section 145 of Income Tax Act, 1961 ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that provision of Rs. 4,70,830 for doubtful debts, loans and advances was not allowable u/s 28 or section 36 ?

(4) Whether, on the facts and in the circumstances of the case, the Tribunal was right in not considering and not allowing investment allowance in respect of tea plants ?"

The questions referred at the instance of the revenue set out in para 19 which reads as under :

"(1) Whether, on the facts and in the circumstances of the case and in view of the findings of the assessing officer and the Commissioner (Appeals) that the expenses for which agricultural development allowance u/s 35C of the Income Tax Act, 1961, was claimed was incurred by the assessee-company itself through its employees, the Tribunal was justified in law in allowing the relief under the said section 35C of the said Act to the assessee-company ?

(2) Whether, on the facts and in the circumstances of the case and on a correct interpretation of the table in Appendix-I read with rule 5 of the Income Tax Rules, 1962, the Tribunal was justified in law in allowing extra shift allowance on building and furniture which were not plant and machinery ?

(3) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding the view that the tea bushes would be considered as "plant" and, therefore, depreciation allowance and investment allowance were admissible on the bushes ?"

2. Assessee has submitted returns on 29-9-1983, declaring loss of Rs. 21,17,420 without adding statement of accounts, inter alia, assessee claimed that assessee is entitled for deduction u/s 35C of the Act. The assessee is also entitled for extra shift allowance on building and furniture and the assessee claimed that tea bushes are plant and, therefore, the depreciation should be allowed on the tea bushes. Assessee has also claimed the gratuity liability on actuarial basis and also claimed deduction of doubtful debts to the tune of Rs 4,17,830 and also investment allowance in respect of the tea plants.

3. First, we will take up the questions referred to at the instance of the assessee. First and second questions relate to the gratuity provision based on actuarial valuation.

At the outset, learned counsel for the assessee, Mr. Khaitan fairly admits that now the issue has been concluded by the Apex Court in the case of Shree Sajjan Mills Ltd. Vs. Commissioner of Income Tax, M.P., Bhopal and Another, Their Lordship also observed as under :

"The aforesaid difficulties in accepting the contentions urged on behalf of the assessee were highlighted by the Calcutta High Court in the case of Peoples Engineering and Motor Works Ltd. Vs. Commissioner of Income Tax, It was pointed out that payment of gratuity was a statutory liability created under the payment of Gratuity Act, 1972. It could normally be said to have arisen for the carrying on of the business. However, for gratuity to be deductible under the Act, it must fulfil the

conditions laid down in section 40A(7). The deduction could not be allowed on general principles under any other section of the Act because sub-section (1) of section 40A makes it clear that the provisions of the section shall have effect notwithstanding anything to the contrary contained in any other provision of the Act relating to the computation of income under the head "profits and gains of business or profession" or, in other words, it means that section 40A would have effect notwithstanding anything contained in sections 30 to 39 of the Act."

And their Lordships further observed at p. 603 as under :

"The principle that fiscal statutes should be strictly construed does not rule out the application of the principles of reasonable construction to give effect to the purpose or intention of any particular provision as apparent from the scheme of the Act, with the assistance of such external aids as are permissible under the law. "

and concluded the issue against the assessee that assessee is not entitled for deduction on the basis of any provision for gratuity on actuarial basis.

4. The next question relates to the bad debts, whether the claim of the assessee regarding the bad debts of Rs. 4,17,830 should be allowed. Learned counsel for the assessee, Mr. Khaitan, submits that assessee has debited this amount in its profit & loss account and made the provision of bad debts as doubtful debts.

Learned counsel for the revenue, Mr. Mullick, submits that there is no finding of the Tribunal that assessee has debited this amount. Learned counsel for the assessee, Mr. Khaitan further submits that once the loan advance is debited in the profit & loss account and credited as provision for doubtful debts account, this court has allowed the claim of the assessee that it amounts to a write off of the bad debts. He places reliance on the decision of this court in the case of CIT v. Union Carbide India Ltd. 78 Taxman 605 (Cal).

5. Though the issue is covered by the decision of this court in the case of Union Carbide India Ltd. but there is no specific finding that the loan advance has been debited in the profit & loss account of the assessee. Therefore, we deem it proper and direct the Tribunal to verify the facts, if the loan advance is debited in the profit & loss account, the claim of the assessee should be allowed in the light of the decision of this court in the case of Union Carbide India Ltd. (supra).

6. The next question referred to at the instance of the assessee is whether the assessee is entitled for the investment allowance in, respect of the tea plants.

Learned counsel for the revenue , Mr. Mullick brought to our notice that the amendment has been made in the section 43(3) and by that amendment ''tea bushes'' are excluded from the definition of a ''plant'' and that amendment has been made with retrospective effect, i.e., from 1-4-1962. That covers the assessment period before us.

7. Mr. Khaitan, learned counsel for the assessee, submits that while amending section 43(3) excluding the tea bushes from the definition of plant in the reasons and object of the amendment, it is stated that as the tea bushes are eligible for depreciation u/s 32 read with rule 8(2) of the Income Tax Rules, the deduction under rule 8(2) is allowed in lieu of depreciation. Therefore, he submits that the new tea plants does not get the benefit of rule 8(2) of the Income Tax Rules and the plants have life for more than 40/50 years. There may not be the real benefit because the assessee is not entitled to get the real benefit on the plants, planted recently. The amended definition of plant in sub-section (3) of section 43 reads as under :

"Plant" includes ships, vehicles, books, scientific apparatus and surgical equipment used for the purpose of the business or profession (but does not include tea bushes or livestock)."

8. The legislature has in an unambiguous language made it clear that the tea bushes cannot be treated as plant. So far the argument of Mr. Khaitan that the new plantation may not get the benefit of rule 8(2) of the Income Tax Rules because of its life in our view does not make any difference when the plain reading of the language excluded the "tea bushes" from the definition of "Plant", we cannot stretch the definition and make the distinction between the tea bushes "planted today" or "planted 40 years back". Once the plant is planted as and when that will be replaced, assessee will get the benefit of rule 8(2) of the Income Tax Rules. Now the issue is covered by the amendment and there is no ambiguity. Therefore, we are supposed to follow the intent of the legislation.

9. Now we come to the question referred at the instance of the revenue . Question No. 1 relates to allowance u/s 35C of the Income Tax Act, 1961. The identical question has been considered by us in the case of this very assessee in IT Ref. No. 70 of 1994 (reported as Commissioner of Income Tax Vs. General Fibre Dealers (P.) Ltd., and we answer the question in the negative. Following our earlier view in the case of this very assessee in IT Ref. No. 70 of 1994, we decide this issue against the assessee.

10. Similarly, we have considered the issue regarding the extra shifted allowance on buildings and furniture and also the issue whether tea bushes are plants. Both were answered in the negative in IT Ref. No. 70 of 1994.

In the result, the questions referred at the instance of the assessee, we answer question Nos. 1 and 2 in the affirmative, that is, in favour of the revenue and against the assessee. Question No. 2 we answer if on verification it is found that assessee has debited the amount that should be allowed. Question No 4, we answer in the affirmative, that is, in favour of the revenue and against the assessee.

On the questions referred at the instance of the revenue , we answer Nos. 1, 2, 3 and 4 in the negative, that is, in favour of the revenue and against the assessee.

The reference application, accordingly, stands disposed of.