(2014) 02 CAL CK 0113

Calcutta High Court

Case No: ITA No. 371 of 2004

Hindustan Lever Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: Feb. 26, 2014

Acts Referred:

- Income Tax Act, 1961 - Section 119, 263, 32, 32(1)(ii), 43

Hon'ble Judges: Sudip Ahluwalia, J; G.C. Gupta, J

Bench: Division Bench

Advocate: J.P. Khaintan, Senior Advocate and S. Basu, Advocate for the Appellant; Nizumuddin, Advocate for the Respondent

Judgement

1. The assessee preferred an appeal against an order passed by the Commissioner in exercise of power u/s 263 of the Income Tax Act, hereinafter referred to as the said Act. The learned Tribunal dismissed the appeal holding as follows:

We find that Section 43(6) expressed the meaning of "written down value". It has been provided in Explanation 2 that where in any previous year, any block of assets is transferred by the amalgamating company to the amalgamated company in a scheme of amalgamation and the amalgamated company is an Indian company, the actual cost of the block of assets in the case of transferee company or the amalgamated company, as the case may be, shall be written down value of the block of assets as in the case of the transferor company or the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year. Thus, according to us, the W.D.V. at the end of the previous year should be the W.D.V. in the hands of the amalgamating as well as amalgamated company as per Explanation 2(b) to Section 43(6). We have also considered the reference to Section 32(1)(ii). We find that this section provides that in respect of depreciation of assets owned, wholly or partly, by the assessee and used for the purposes of the business, certain percentage of W.D.V. has to be allowed. We have had no occasion to find any

where in the Statute from which it would appear that the intention of the Legislature is to grant depreciation both to the amalgamating company as well as amalgamated company twice in a particular assessment year. Therefore, it is abundantly clear that the CIT, acting u/s 263, was absolutely justified in setting aside the order of the Assessing Officer for examination into this aspect of the matter and to consider the claim of depreciation of Rs. 3,05,85,692/-.

2. Aggrieved by the order of the learned Tribunal, the assessee has come up in appeal.

3. Mr. Khaitan, learned Senior Advocate appearing for the appellant-assessee, contended that depreciation has been claimed by the amalgamating company u/s 32 of the Act. According to him, Section 32 does not create any bar as held either by the CIT (A) or by the Learned Tribunal. The bar, if any, was introduced for the first time by amendment to Section 32 by which the third proviso was added with effect from 1st April, 1997. We are concerned with the assessment for the year 1994-95. Even by the third proviso the period during which claim for depreciation may be made by the amalgamating company has been restricted. Since the aforesaid proviso was not there at the relevant period of time, the same could not have any application. He also drew our attention to a copy of the Bill presented to the Parliament proposing the amendment before the third proviso was introduced to the statute. He drew our attention to paragraph (b) with the title "depreciation in case of succession and amalgamation", which reads as follows:

The existing provisions provide for depreciation allowance on assets acquired by an assessee during the previous year and which are put to use for the purposes of business or profession for a period of less than one hundred and eighty days in a previous year. It is provided that the depreciation allowance in such cases will be restricted to fifty per cent of the amount calculated at the prescribed rates. In the cases of succession in business and amalgamation of companies, the predecessor in business and the successor or amalgamating company and amalgamated company, as the case may be, are entitled to depreciation allowance on the same assets, which in aggregate exceeds the depreciation allowance admissible for a previous year at the prescribed rates. It is proposed to restrict the aggregate deduction for this allowance in a year to the deduction computed at the prescribed rates and apportion the allowance in the ratio of the number of days for which the assets were used by them.

4. He also drew our attention to a Circular No. 762 dated 18th February, 1998 issued by the CBDT in connection with Finance (No. 2) Act, 1996-Explanatory Notes on provisions relating to Direct Taxes. He relied on paragraph 23.2 of the aforesaid Circular, which reads as follows:

The third proviso to sub-section (1) of section 32 provides that the depreciation allowance will be restricted to fifty per cent of the amount calculated at the

prescribed rates in cases where assets acquired by an assessee during the previous year are put to use for the purpose of business or profession for a period of less than one hundred and eighty days in that previous year. Thus, in the cases of succession in business and amalgamation of companies, the predecessor in business and the successor or amalgamating company and amalgamated company, as the case may be, are entitled to depreciation allowance on the same assets, which in the aggregate may exceed the depreciation allowance admissible for a previous year at the rates prescribed in Appendix I of the income tax Rules, 1962. An amendment has, therefore, been made to restrict the aggregate deduction for this allowance in a year in such cases to the amount computed at the prescribed rates. It has also been provided that the allowance shall be apportioned in the ratio of the number of days for which the asset is put to use in such cases.

5. He submitted that both the Parliament and the CBDT appear to have proceeded on the basis that the amendment was necessary in order to restrict the aggregate deduction on account of depreciation allowance. He added that the Circular issued by the CBDT is binding upon the authorities and is also a guide. He, in this regard, drew our attention to a judgment in the case of Union of India and Another Vs. Azadi Bachao Andolan and Another, wherein a judgment of this Court in the case of Baleshwar Bagarti vs. Bhagirathi Dass was quoted with approval which reads as follows:

It is a well-settled principle of interpretation that courts in construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it.

6. The apex Court also relied upon the judgment in the case of K.P. Varghese v. ITO, wherein it was held that the Circulars of the Central Board of Direct Taxes issued u/s 119 are legally binding on the Revenue. The apex Court in that case further cited Crawford on Statutory Construction and quoted with approval the following passage:

The rule of contemporanea expositio is that "administrative construction (i.e., contemporaneous construction placed by administrative or executive officers charged with executing a statute) generally should be clearly wrong before it is overturned; such a construction, commonly referred to as practical construction, although non-controlling, is nevertheless entitled to considerable weight, it is highly persuasive.

7. Mr. Khaitan, as such, submitted that both the CIT(A) and the Learned Tribunal were wrong in taking the views as they did and, therefore, the order under challenge should be set aside.

8. Mr. Nizumuddin, learned Advocate appearing for the Revenue, submitted that allowance on account of depreciation u/s 32 of the Act can be claimed on the written down value of the block of assets. The expression "written down value" has been

defined in sub-Section 6 of Section 43 of the Act. He drew our attention to Explanation 2 below clause [c](ii) which reads as follows:

[Explanation 2. - Where in any previous year, any block of assets is transferred,-

(a) by a holding company to its subsidiary company or by a subsidiary company to its holding company and the conditions of clause (iv) or, as the case may be, of clause (v) of section 47 are satisfied; or

(b) by the amalgamating company to the amalgamated company in a scheme of amalgamation, and the amalgamated company is an Indian company,

then, notwithstanding anything contained in clause (1), the actual cost of the block of assets in the case of the transferee-company or the amalgamated company, as the case may be, shall be the written down value of the block of assets as in the case of the transferor-company or the amalgamating company for the immediately preceding previous year as reduced by the amount of depreciation actually allowed in relation to the said preceding previous year.]

10. He contended that the provisions of Section 32 have to be read in conjunction with Section 43(6). From a conjoint reading of these two provisions it cannot be held that the so-called restriction was not there before introduction of the third proviso to Section 32 as contended by Mr. Khaitan.

11. We have considered the rival submissions advanced by the learned Advocates. In case the contention of Mr. Khaitan is to be accepted, the expression "as in the case of the transferor-company or the amalgamating company" becomes redundant. If these expressions are to be given appropriate weightage, then it is not possible to hold that the views taken by the CIT(A) and the Learned Tribunal are wrong in point of law.

12. We are, as such, in agreement with their views and are unable to accept the submissions of Mr. Khaitan.

13. The appeal is, therefore, dismissed.