
(2018) 02 BOM CK 0012

Bombay High Court (Nagpur Bench)

Case No: 194 of 2007

M/s. Ballarpur
Industries Limited

APPELLANT

Vs

The Commissioner of
Income Tax-IV

RESPONDENT

Date of Decision: Feb. 2, 2018

Acts Referred:

- Income Tax Act, 1961, Section 32(1), Section 32(1), Section 32(1), Section 32(1), Section 234C, Section 234C, Section 234C, Section 234C - Depreciation - Interest for deferment of advance tax

Hon'ble Judges: R.K. Deshpande, M.G. Giratkar

Bench: Division Bench

Advocate: K.P. Dewani, S.N. Bhattad, A.J. Bhoot

Final Decision: Disposed

Judgement

1. This appeal preferred by the assessee was admitted on the following substantial questions of law :

(1) Whether Income Tax Appellate Tribunal was legally justified in confirming disallowance made by Assessing Officer in respect of claim of appellant of depreciation amounting to Rs.2,64,144/- pertaining to assets transferred upon amalgamation in the earlier years from the amalgamating company viz. Modern Stramit (I) Ltd., a company amalgamated by virtue of the order of the BIFR.

(2) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was legally justified in confirming disallowance made by Assessing Officer

at Rs.7,67,110/- in respect of legal fees and expenses paid by appellant.

(3) Whether on the facts and circumstances of the case the Tribunal was legally justified in confirming disallowance made by A.O. at Rs.4,62,08,395/- as prior period expenses and also not accepting the alternative prayer for grant of deduction in the years to which the same relates as per A.O.

(4) Whether on the facts and circumstances of the case Income Tax Appellate Tribunal was legally justified in confirming the disallowance made by A.O. at Rs.86,39,470/- being expenditure incurred by appellant at its office located at Kolkata.

(5) Whether on the facts and circumstances of the case Income Tax Appellate Tribunal was legally justified in dismissing the claim of appellant in respect of unabsorbed depreciation u/s 32(1) of Income Tax Act, 1961 at Rs.46,18,37,628/-.

(6) Whether on the facts and circumstances of the case Income Tax Appellate Tribunal was justified in not admitting the additional ground raised by appellate in respect of levy of interest u/s 234C of Income Tax Act 1961 and inconfirming the levy of interest u/s 234C of Income Tax Act 1961.

2. Shri Dewani, the learned counsel appearing for the appellant-assessee, submits that the substantial question of law at serial No.(1) is covered by the decision of this Court delivered in ITL No.27 of 2003 decided on 7-9-2017 against the assessee. The substantial question of law at serial No.(5) is covered by the decision of this Court in ITR No.12 of 1995 decided on 22-6-2007 against the assessee, and similar is the position in respect of the substantial question of law at serial No.(6), which is decided against the assessee by the Apex Court in the case of Joint Commissioner of Income Tax v. Rolta India Ltd ., reported in (2011) 330 ITR 0470 (SC). Therefore, these substantial questions of law no longer survive for consideration of this Court, and the appeal to that extent is required to be dismissed.

3. So far as the substantial questions of law at serial Nos.(3) and (4) are concerned, the same are covered by the decision of this Court rendered in ITL 121 of 2006 decided by this Court today itself in favour of the assessee. Hence, the substantial questions of law at serial Nos.(3) and (4) would be in favour of the assessee and the disallowance of expenditure of Rs.4,62,08,395/- covered by the question of law at serial No.(3), and

Rs.86,39,470/- covered by the question of law at serial No.(4) is required to be set aside, and the said expenditure is required to be allowed.

4. So far as the substantial question of law at serial No.(2) is concerned, Shri Dewani for the appellant-assessee submits that in the matter pertaining to Assessment Year 1998-99, such expenditure has been allowed by the Assistant Commissioner of Income-Tax, and in the light of that decision, this question is required to be considered, which can be done by the Assessing Officer, if the matter is remitted back to him for fresh consideration.

5. In the result, this appeal is partly allowed, and the following order is passed :

O R D E R

(1) The substantial questions of law at serial Nos.(1), (5) and (6) are answered against the appellant-assessee.

(2) The substantial questions of law at serial Nos.(3) and (4) are answered in favour of the assessee, and the disallowance of expenditure covered by these two questions is set aside and it is directed that the expenditure be allowed.

(3) So far as the substantial question of law at serial No.(2) is concerned, the matter is remitted back to the Assessing Officer, who shall decide it in the light of his decision in the matter of appellant-assessee itself for Assessment Year 1998-99.

6. The appeal is disposed of in the aforesaid terms.