

(2018) 02 BOM CK 0013

Bombay High Court (Nagpur Bench)

Case No: 121 of 2006

M/s Ballarpur Industries
Ltd.,

APPELLANT

Vs

The Commissioner of
Income Tax

RESPONDENT

Date of Decision: Feb. 2, 2018

Acts Referred:

- Income Tax Act, 1961, Section 37, Section 37, Section 37, Section 37, Section 43(b), Section 43(b), Section 43(b), Section 43(b) - General - Definitions of certain terms relevant to income from profits and gains of business or profession

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

Bench: Division Bench

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

Final Decision: Allowed

Judgement

1. This appeal was admitted on 16th July, 2007, on the following substantial questions of law:-

(I) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was legally justified in confirming disallowance made by Assessing Officer at Rs. 2,31,71,040/- as prior period expenses and also not accepting the alternate prayer for allowing the deduction in the years to which the same relate as per Assessing Officer?

(II) Whether Income Tax Appellate Tribunal was legally justified in confirming disallowance made by Assessing Officer in respect of claim of appellant for depreciation amounting to Rs. 5,50,908/- pertaining to assets transferred upon amalgamation in the

earlier year (Assessment Year 1992-1993) from the amalgamating company, viz. Modern Stramit (I) Ltd. a company amalgamated by virtue of the order of the BIFR?

(III) Whether Income Tax Appellate Tribunal was legally justified in confirming disallowance made by Assessing Officer at Rs. 66,000/- as share issue expenses which includes placement fees which are revenue in nature and allowable under Section 37 of Income Tax Act, 1961?

2. Shri Dewani, learned counsel appearing for the appellant submits that the substantial questions of law at Sr. Nos. 2 and 3 are covered against the assessee in ITL NO. 100/2004 decided by this Court on 08.09.2017. In view of this, the substantial questions of law at Sr. No. 2 and 3 do not survive.

3. So far as the substantial question of law at Sr. No.1 is concerned, the Assessee claims expenses of Rs. 2,31,71,040/- during the assessment year 1998-1999 though actually the expenses pertain to earlier assessment year. The claim is that the amount was actually paid in the assessment year 1998-1999 and some expenses made during the previous year but not claimed.

4. Shri S. N. Bhattad, learned counsel appearing for the Department has invited our attention to each provision of Section 43(B) of the Income Tax Act which has been relied upon by the Appellate Tribunal to answer the question against the Assessee and has urged that the amount pertaining to the statutory expenses has to be claimed in the year in which such expenses are actually required to be incurred or actually to be paid. According to him, the expenses in question are covered by Section 43(B) and should have been therefore, claimed in the previous year in which actually paid prior to 1998-1999.

5. We put a specific question to Shri Bhattad to point out any decision holding that if the statutory expenses covered by Section 43(B) are not actually paid during the year in which those are required to be paid then even if such expenses are actually paid in the subsequent year, the deduction can not be claimed. No such decision is brought to our notice. If the expenses are covered by Section 43(B), there cannot be disputed about its claim for deduction and merely because the deduction was not claimed in the previous year, it would not prevent the assessee from claiming it in the assessment year during which the payment was actually made. The substantial question of law we therefore, answered accordingly.

6. In view of above, the questions have been answered in favour of assessee. Appeal is required to be partly allowed and disallowance of Rs. 2,31,71,040/- is set aside and the same is allowed as expenditure actually incurred.