

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

I.T.R. NO. 56 OF 1988
DATE OF DECISION: 26.04.2006

COMMISSIONER OF INCOME TAX (CENTRAL), LUDHIANA

VERSUS

M/S OSWAL WOOLLEN MILLS LTD., LUDHIANA

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE RAJESH BINDAL

PRESENT: Mr Aalok Jagga, Advocate for
Mr D.S. Patwalia, Advocate,
for the Revenue.

Mr Sanjay Bansal, Advocate with
Mr Ashwani Gaur, Advocate,
for the Assessee.

ORDER:

The following questions of law have been referred for our opinion by the Income Tax Appellate Tribunal, Chandigarh Bench, arising out of its order dated 28.7.1986 in ITA No.32/Chandi/85 in respect of assessment year 1981-82:-

1. Whether on the facts and in the circumstances of the case and on a proper interpretation of the provisions of the law, the Appellate Tribunal was right in law in allowing the assessee's claim for investment allowance on the followings.

- i) Outgoing switch boards in the Madras Vanaspati Unit:
- ii) Electric Machinery worth Rs.2,22,129/- installed in the Solvent Unit?

2) Whether on the facts and in the circumstances of the case and on a proper interpretation of the Income-tax Act/Rules, the Appellate Tribunal was right in law in allowing extra shift allowances on new electric installations in fully-fashioned unit, Ludhiana, as also on additions to the Machinery made on the last date of the year?

- 3) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing deduction of Rs.33,996/- on account of sales tax liability of M/s Gulab Chand Rattan Lal on sales effected in an earlier year?
- 4) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing the assessee's claim for Rs.1,03,796/- on account of undischarged/disputed liability for electricity charges?
- 5) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in allowing the assessee's claim to the extent of Rs.12,000/- out of disallowance of Rs.33,492/- towards cost of wall clocks, despite the fact that the claim remained unproved and even details concerning their distribution was not furnished?

We have heard learned counsel for the parties.

Learned counsel for the Assessee submitted that the first question stands covered by a judgment of the Gujarat High Court in Commissioner of Income-Tax vs. Starlight Silk Mills P. Ltd., (2006) 280 ITR 257 taking a view that AC plants, electric installation and transformers form integral part of plant and machinery, hence, investment allowance is available on the same. No contrary view has been shown by learned counsel for the Revenue. Following the principles laid down in Starlight Silk Mills's case (supra) and keeping in view findings of facts recorded by the Tribunal to the effect that the above items are part and parcel of plant and machinery, we answer the first question in favour of the Assessee and against the Revenue.

As regards the second question, the matter has only been remitted back by the Tribunal to the ITO for calculating the extra shift allowance on the entire machinery. Learned counsel for the assessee fairly states that the question referred to above is covered by the judgments of Hon'ble Supreme Court of India in South India Viscose Ltd. vs. C.I.T., (1997) 227 ITR 286 and Sundaram Sinning Mills vs. C.I.T., (1997) 227 ITR 301. The counsel for the Revenue could not dispute this proposition.

In view of the binding precedents, let the calculations be made in terms of the directions by the Tribunal, keeping in view the binding precedents of Hon'ble the Supreme Court of India, as referred to above.

As regards the third question, it is pointed out that the third question as framed does not arise. The deduction of Rs.33,996/- has not been allowed towards sales tax liability to M/s Gulab Chand Rattan Lal, but in fact has been allowed as a business loss. As per finding of the Tribunal, the said amount had to be paid, as the said firm adjusted the Assessee's credit balance to that extent. A reference has been made to findings recorded in para 17 of the order of the Tribunal. Learned counsel for the Revenue has not been able to rebut the submission made on behalf of the Assessee. Accordingly, we hold that this question of law as framed does not arise and we, therefore, return this question unanswered.

As regards the fourth question, the Tribunal has relied upon a judgment of the Hon'ble Supreme Court in Kedarnath Jute Mfg. Co. Ltd. vs. Commissioner of Income-Tax, (1971) 82 ITR 363 and has also recorded a finding that the Assessee was following mercantile system and liability has accrued during the year in question. In view of this finding, we answer the said question in favour of the Assessee and against the Revenue.

Coming to the last question, we find that the Assessee's claim to the extent of Rs.12,000/- had been allowed without the claim having being proved. In absence of proof, the said claim could not have been made. We are, thus, of the view that answer to the question has to be in favour of the Revenue and against the Assessee, but having regard to the fact that the amount involved is very small and the assessment year in question is 1981-82, following the observations made by the Full Bench of this court in Commissioner of Income-Tax vs. Smt.Aruna Luthra, (2001) 252 ITR 76, we direct that no effect will be given to this finding for the assessment year in question.

The reference stands disposed of accordingly.

(ADARSH KUMAR GOEL)
JUDGE

April 26, 2006
sanjeev

(RAJESH BINDAL)
JUDGE