IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 189 of 2014 (O&M)
Date of decision: 10.8.2015

M/s Rana Polycot Limited

……Appellant.

Commissioner of Income Tax, Aayakar Bhawan, Sector 17, Chandigarh

…..Respondent

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ravi Shankar, Advocate for the appellant.
Ms. Urvashi Dhugga, Advocate for the respondent.

Ajay Kumar Mittal,J.

1. The assessee has filed this appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 28.10.2013, Annexure A.3 passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'A', Chandigarh (in short, "the Tribunal") in ITA No.1386/CHD/2010 for the assessment year 2006-07, claiming following substantial question of law:-

> "Whether in the facts and circumstances of the case the Income Tax Appellate Tribunal is justified in disallowing depreciation at the rate of 15% on fee paid to Registrar of Companies for expansion of capital base which was claimed by the appellant as capital expenditure in the light of judgment of Hon'ble Supreme

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Court of India in the case of ***Punjab State Industrial Development Corporation Limited vs. CIT***, (1997) 225 ITR 792 (SC) when the expenditure has been accepted as capital in nature?

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The appellant is engaged in the business of manufacturing cotton yarn, dyed yarn and knitted garments. Return of income was filed by it on 17.11.2006 declaring nil income after setting off unabsorbed depreciation. The assessment was framed vide order dated 26.12.2008 passed by the Assessing Officer (Annexure A.1) by making following additions:

i) Public Issue expenses	₹ 6,92,753/-
ii) Depreciation disallowed	₹ 1,50,000/-
iii) Disallowance under section 40(a)(ia)	₹ 79,84,645/-
iv) Interest disallowed	₹ 93,500/-
v) Disallowance under section 40(a)(ia)	₹ 4,27,226/-

Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] who vide order dated 11.8.2010, Annexure A.2 confirmed the same but allowed the issue of the disallowance of ₹ 1,50,000/- being depreciation claimed at the rate of 15% on fee paid to Registrar of Companies amounting to ₹ 10 lacs for increase in authorized capital base. Separate appeals were filed by the assessee and the revenue before the Tribunal. Vide order dated 28.10.2013, Annexure A.3, the Tribunal reversed the order of CIT(A) on this issue and confirmed the action of the Assessing Officer regarding disallowance of depreciation @ 15% on fee paid to the Registrar of Companies. Hence the instant appeal by the assessee.

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3. We have heard learned counsel for the parties.

4. The primary issue that arises for consideration in the present appeal relates to allowance of depreciation under Section 32(1) of the Act @ 15% on ₹ 10,00,000/- paid by the assessee as fees to the Registrar of Companies for the expansion of capital base and capitalized towards plant and machinery.

5. It was not controverted by learned counsel for the assessee that the amount of ₹ 10,00,000/- paid by the assessee as fees to the Registrar of Companies for the expansion of capital base was capital expenditure in view of authoritative pronouncement of the Apex court in ***Punjab State Industrial Development Corporation Limited vs. CIT***, (1997) 225 ITR 792 (SC) and ***Brooke Bond India Limited vs. CIT*** (1997) 225 ITR 798 (SC). It was urged that the assessee-company increased its authorized share capital for expansion of existing business and had to deposit ₹ 10 lacs as fees with the Registrar of Companies which was capitalized to plant and machinery during the year as the same was paid to generate funds for the expansion of the business. It was, thus, claimed that assessee was entitled to 15% depreciation on the aforesaid amount. Alternatively, it was submitted that in case the amount of fees paid to Registrar of Companies for augmenting the authorized capital was not attributable to any capital asset, then in that eventuality, the assessee was entitled to amortization of these preliminary expenses under Section 35D(2)(c)(iv) of the Act where it is to be allowed on amount equal to one fifth of such expenditure i.e. 20% for each of the successive previous year. It was claimed that an application bearing CM No.10420 CII of 2015 has been filed under Section 151, Code of Civil Procedure claiming reframed question of law in this regard.

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6. Conversely, learned counsel for the revenue supported the order passed by the Tribunal and maintained that the assessee had been rightly disallowed depreciation of ₹ 1,50,000/- by the Assessing Officer and the Tribunal. Relying upon judgment of the Delhi High Court in ***CIT vs. Hindustan Insecticides Limited*** (and vice versa) (2001) 250 ITR 338, the claim of the assessee under Section 35D (2)(c) (iv) of the Act was also disputed.

7. The amount of fees paid to Registrar of Companies for augmenting the aforesaid share capital for expansion of the business had been capitalized by the assessee against plant and machinery as according to the assessee, the same was paid to generate funds for the expansion of the existing business. In such circumstances, the claim of the assessee cannot be held to be unjustified whereas neither the Assessing Officer nor the Tribunal have recorded any cogent and convincing reasons for holding it otherwise. Once it is held that the amount of fees paid to Registrar of Companies for increasing the authorized share capital is capitalized against plant and machinery as a necessary corollary, the assessee is entitled to depreciation at the rate of 15% on ₹ 10 lacs amounting to ₹ 1,50,000/-. The CIT(A) had rightly accepted the claim of the assessee with the following observations:-

> "19. After considering rival submissions, I find that the AO has wrongly disallowed the claim of the appellant. During the assessment proceedings, the AO accepted that the amount of ₹ 10,00,000/- pertains to the fee paid to the Registrar of companies for increase in authorized capital but denied the claim of the appellant by holding that it was not a capital expenditure.
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> 20. This issue has been decided by the Hon'ble Apex Court in the case of ***Punjab State Industrial Dev. Corporation Limited vs. CIT*** (1997) 225 ITR 792 (SC) where it has been held that

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> "Business expenditure – capital or revenue expenditure – Fee paid to the Registrar of Companies for expansion of the capital base of the company was directly related to the capital expenditure incurred by the company and although incidentally that would certainly help in the business of the company and may also help in profit making, it still retains the character of a capital expenditure, since the expenditure was directly related to the expansion of the capital base of the company."
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> 21. The Apex Court by giving the above finding, concluded that "amount paid to Registrar of Companies as filing fee for enhancement of capital is capital expenditure."
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> 22. In view of the above, I find that the AO has wrongly denied the claim of depreciation of ₹ 1.50 lacs on fee paid to Registrar of Companies, thereby allowing the appeal on this ground."

8. Examining the alternative plea of the assessee, it may be noted that in case, it is held that the fees paid to Registrar of Companies is a capital expenditure not attributable to any capital asset and the assessee is not entitled to claim any depreciation, then in that eventuality, the assessee would be entitled to claim an amount equal to one fifth i.e. 20% of such expenditure for each of the five successive previous years as amortization of preliminary expenses under Section 35D(2)(c)(iv) of the Act. Rajasthan High Court in ***CIT vs. Multi Metals Limited,*** (1991) 188 ITR 151 discussing the scope of Section 35D(2)(c)(iv) of the Act had held that the fees paid to Registrar of Companies for enhancing the authorized share capital of a company was allowable under section 35D(2)(c)(iv) of the Act in the following terms:-

> "8. Coming to the second question, arguments were addressed before us by the Revenue that Sub-section (2)(c)(iv) of Section 35D is not applicable to the present case. The said clause reads as under :

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"35D(2)(c) where the assessee is a company, also expenditure--....

(iv) in connection with the issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus ;"

Rebutting the submission of the Revenue, the assessee argued that the language of Section 35D is wide enough to cover a case of payment of fee to the Registrar for raising capital of the assessee-company and the provision should be so interpreted that the same be not against the assessee, particularly when its object was to benefit him. Learned counsel contended that the settled principle is that a provision of law capable of two interpretations should be interpreted in a manner so as to give benefit to the asses see. Sub-section (2)(c)(iii) of Section 35D is as under :

"35D(2)(c)...

(iii) by way of fees for registering the company under the provisions of the Companies Act, 1956 (1 of 1956)."

The provision contained in Sub-section (2)(c)(iii) of Section 35D was resorted to by learned counsel for the assessee in the alternative in support of his submission that the expenditure incurred by way of enhancement of capital would be covered by the same.

9. To us, it appears that even if the provision of Sub-section (2)(c)(iii). of Section 35D is not applicable, the language of Sub-section (2)(c)(iv) of Section 35D is wide in nature and would include the deductibility of fee paid by the assessee to the Registrar for enhancement of capital. Therefore, the said provision was rightly applied to the present case by the Income-tax Appellate Tribunal.

10. Under these provisions, deduction of expenditure incurred for registration is to be spread over a period of ten years and is not allowable in the year in which the expenses are incurred. To

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> uphold the submission of the Revenue that expenditure incurred for obtaining registration would not be allowable either under Sub-section (2)(c)(iii) or Sub-section (2)(c)(iv) of Section 35D would defeat the obvious intention of the Legislature and would produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result, we have to hold that under Sub-section (2)(c)(iv) of Section 35D, the expenditure incurred for obtaining registration would be liable to be deductible.
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> 11. We, consequently, hold that the fee paid to the Registrar of Companies for raising authorised capital of the assessee-company was covered by Sub-section (2)(c)(iv) of Section 35D of the Income-tax Act."

Similarly, in ***CIT vs. Mahindra Ugine and Steel Co. Limited,*** (2001) 250 ITR 84 (Bom.), ***Autolite India Limited vs. CIT,*** (2003) 264 ITR 117 (Raj.), and ***CIT vs. Ashok Leyland Limited***, (2012) 349 ITR 663 (Mad.), expenses incurred on issue of shares or public issue for expansion of existing unit were allowed to be amortized under Section 35D(2) (c) (iv) of the Act.

9. In so far as pronouncement of Delhi High Court in ***Hindustan Insecticides Limited's*** case (supra), on which revenue has placed reliance is concerned, that was a case relating to Section 35D(2)(c)(iii) of the Act which is different in its applicability from Section 35D(2)(c)(iv) of the Act. Thus, the argument of the revenue cannot be accepted.

10. Viewed from any angle, it is concluded that the claim of the assessee cannot be declined. Since the fees paid to Registrar of Companies for enhancing the authorized share capital for expansion of the business had been capitalized against plant and machinery, the assessee would be entitled to depreciation at the rate of 15% on ₹ 10,00,000/- and the benefit of Section 35D(2)(c)(iv) of the Act would not be available to the assessee.

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11. Upshot of the above is that the substantial question of law is answered accordingly and the appeal is disposed of by holding that the assessee shall be entitled to depreciation of ₹ 1,50,000/- @ 15% on ₹ 10,00,000/- under section 32(1) of the Act on the amount capitalized towards plant and machinery by including the fees paid to Registrar of Companies by the assessee. Consequently, CM No.10420 CII of 2015 has been rendered infructuous and is disposed of as such`.

(Ajay Kumar Mittal)
Judge

August 10, 2015 **(Ramendra Jain)**
Judge

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HIGH COURT OF PUNJAB AND HARYANA
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