Court No. - 37

Case :- INCOME TAX APPEAL No. - 3 of 2016

Appellant :- Pr. Commissioner Of Income Tax
Respondent :- M/S Rimjhim Ispat Limited
Counsel for Appellant :- Ashok Kumar

Hon'ble Tarun Agarwala,J.
Hon'ble Vinod Kumar Misra,J.

We have heard Sri Ashok Kumar, the learned counsel for the appellant along with Sri Manu Ghildiyal, the learned counsel for the Income Tax Department and Sri V.K.Upadhya, the learned Senior Counsel assisted by Sri Ritvik Upadhya, the learned counsel for the assessee.

The present appeal has been filed under Section 260-A of the Income Tax Act on the following substantial question of law.

(A) "Whether the Tribunal was justified in deleting the disallowance made in the "consumable stores" ?

(B) Whether the Tribunal was justified in holding that the expenses attributable on the conveyance and telephone of the Directors of the assessee-company should be included in the expenses of the assessee-company?"

The facts relating to this appeal for the assessment year 2004-05 is that the company under the "profit and loss account" had claimed a sum of Rs.22,06,84,916/- under the head "manufacturing expenses" indicating it as consumable stores. During the course of assessment proceedings, the assessee was directed to file details in respect of the expenses claimed for and also justify them. The Assessing Authority, after examining the matter, came to the conclusion that the bills and vouchers and other supporting documents in relation to various expenses could not be produced. The Assessing Officer also found that no stock register was maintained and therefore balance consumable stores could not be verified.

Considering the totality of the facts and non-maintenance of the stock register, the disallowance of 10% of the expenses was added to income of the assessee. Similarly, the Assessing Officer found that the telephone and vehicles used by the directors of the assessee-company could not form part of the above expenses under the "profit and loss account" and, accordingly, deleted 20% of the expenses claimed under the said head.

In appeal the Ist Appellate Authority affirmed the finding of the Assessing Authority but reduced the disallowance from 10% to 5% holding that this 5% would meet ends of justice. The Ist appellate authority also held that the bills and vouchers of the expenditure made were not produced nor the assessee had maintained the stock register. With regard to the telephone, vehicle and travelling expenses, the Ist Appellate Authority held that the assessee's case would be covered as per the decision taken for the assessment year 2001-02 and that the disallowance would be computed on the basis of the said decision.

The assessee as well as the revenue filed second appeal before the Tribunal. The appeal of the revenue was dismissed and the appeal of the assessee was allowed. The Tribunal held that the disallowance under the head "consumable stores/manufacturing expenses" to the extent of 5% was not justified and deleted the same on the strength that there was increase in the turnover by 5% and the expenses under this head had gone down considerably. On the issue of telephone and conveyance allowance, the Tribunal held that the assessee's case was covered by a decision of the Gujarat High Court in **Sayaji Iron And Engg. Co. Vs. Commissioner of Income Tax, (253) 2002 ITR 749**.

Having heard the learned counsel for the parties, we find that there is an express finding given by the Assessing Authority as well as by the Ist Appellate Authority with regard to non-production of bills and vouchers and for not maintaining the stock register. In the absence of non-production of bills and vouchers, the Assessing Officer was justified in disallowing certain expenditure by 10%, which was reduced by the Ist Appellate Authority to 5%. This aspect had not at all been considered by the Tribunal and the same had only been allowed on the ground that the turnover has increased by 5% and the expenditure has reduced. The Tribunal has lost sight of the fact that the expenditure claimed under the head manufacturing expenses, which forms part of the "profit and loss account", showing expenses made by the assessee are required to be proved by production of bills and vouchers. In the absence of production of bills and vouchers, an inference can be drawn by the Assessing Authority that such expenses shown under this head were inflated or were not supported by any bills, vouchers or any other documentary evidence, which would justify the Assessing Officer in disallowing certain portion of such expenses.

In the light of the aforesaid, we are of the opinion that the Tribunal committed an error in allowing the appeal of the assessee and by totally deleting the disallowance of 5%. We, accordingly, allow the Ist question of law as stated aforesaid, in favour of the appellant, i.e., the Department and against the assessee and set aside that part of the order of the Tribunal on this aspect and restore the order of the Ist Appellate Authority. In our opinion, the disallowance of 5% in the facts of the case is justified.

Insofar as the second question is concerned, nothing has been brought on record by the Department to indicate as to what was the direction given by the authority for the assessment year 2001-02. We are of the view that the expenses made by the assessee on telephone and conveyance running expenses, etc have to be dealt with in the same fashion as have been dealt in the earlier assessment years. The Tribunal has relied upon a decision of the Gujarat High Court holding that the remuneration given to the Directors which includes any expenditure incurred in providing benefit free of charge under the Companies Act cannot be disallowed. As such disallowance for maintenance of vehicle or conveyance and telephone is not justifiable. The said decision is squarely applicable in the present case.

The appeal is partly allowed. Question no.A is answered in favour of the Department and question no.B is answered in favour of the assessee.

Order Date :- 5.1.2016
MAA/-

(Vinod Kumar Misra,J.) **(Tarun Agarwala,J.)**