

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL No. 18 of 2004

C I T AJMER

V/S

M/S V T C LEASING & FINANCE LTD

Mr. K K BISSA, for the appellant / petitioner

Mr. ANJAY KOTHARI, for the respondent

Date of Order : 17.1.2008

HON'BLE SHRI N P GUPTA, J.

HON'BLE SHRI DEO NARAYAN THANVI, J.

JUDGMENT

This appeal has been filed by the Revenue against the judgment of the Tribunal dated 19.11.2003, Annex.3, deciding two appeals for the same assessment year 1998-99. Appeal No.138 having been filed by the assessee and appeal No.161 having been filed by the Revenue.

This appeal was admitted on 12.7.2004, while framing the following substantial questions of law:-

"(i) Whether on the facts and in the circumstances of the case and in law, the learned tribunal was justified in deleting the addition of Rs.17,35,958/- on account of income from lease rent made by the Assessing Officer and as upheld by the learned CIT(A) specially when the assessee was maintaining books of accounts on mercantile method as provided u/s 145 of the Income Tax Act?

(ii) Whether on the facts and in the circumstances of the case and in law, the learned tribunal was justified in upholding the order of CIT(A) regarding deletion of insurance charges of Rs.1,15,828/- on the plea that actual payment was made by the assessee (lessor) whereas the same was to be borne by the lessee as per the lease agreement?

(iii) Whether on the facts and in the circumstances of the case and in law, the learned tribunal was justified in upholding the order of the learned CIT(A) regarding deletion of disallowance of salary expenses at Rs.1,151,200/- paid to its Director's relatives when no services were actually rendered by the employees?

(iv) Whether the learned tribunal was justified in facts as well as in law in upholding the order of the CIT(A) regarding directing the Assessing Officer to consider the payment of salary to spouse in the hands of Directors in the light of provisions of Section 64 of the I.T. Act?"

Arguing the appeal, the learned counsel for the Revenue read to us all the impugned judgments including the judgment of the Assessing Authority as well as the Appellate Authority.

We have heard the learned counsel and have gone through the judgments cited at the bar and the relevant provisions of law as well, and have also gone through the record.

So far as the first question is concerned, of course, it has come that the assessee was maintaining books

of accounts by both manners viz., by receipt basis, and on mercantile basis as well, inasmuch as, with respect to accrual of lease income, mercantile system was adopted. However, for lease and hire income, the receipt basis was adopted. True it also is that by virtue of Section 145, as amended, the income chargeable under the head "profits and gains of business or profession" or "income from other sources" is, subject to provisions of sub-section (2), to be computed in accordance with either cash or mercantile system of accounting, regularly employed by the assessee. Earlier the provision was that such income was to be computed in accordance with the method of accounting the regularly employed by the assessee. In the present case, the learned tribunal has found that this is undisputed and settled principles of fiscal law, that only the real income is to be taxed, and that the same income cannot be taxed twice. It was also taken to be settled principle of law, that realities of life have to be considered while arriving at the taxable income. It was noticed that amendment in Section 145 has been carried out with the sole aim of checking the escapement of income, which occurred due to heterogeneous system of accounting followed by the assessee. Then it was found as a fact that the assessee has been following the same system, and has also the same system in the immediately preceding years, and the same had been accepted by the department. With this, it has been found in para 10, that for the purpose of showing the

income of lease rent, the assessee had been following the receipt basis as accounting, even though otherwise he was following the mercantile system. Then the realities of life were considered, about there being defaults in payment, and disputes, and sometimes the hirer refused to make payment. Then various judgments had been considered, and it was again considered, that the real income is to be considered with reference to commercial and business realities of the situation, and not merely with reference to entries made in the books of accounts. Then judgment of Hon'ble the Supreme Court in Andhra Bank Ltd. Vs. CIT reported in 1997 (225) ITR 447 was followed, wherein it was held, that there cannot be a tax if no income resulted, despite the entry in the book keeping. Therefore, it was found, that to arrive at a real income in the case in hand, the accrual basis cannot be a justified one. Then possibility of double taxation was also considered, and thus, the ground raised by the assessee was accepted.

In our view, so far as the legal proposition propounded, and considered, by learned Tribunal are concerned, they are not in dispute, more so when the Tribunal has proceeded on the basis of judgment of Hon'ble the Supreme Court in Andhra Bank's case. Therefore, it remains only a question of fact, as to whether any income was derived by the assessee in the relevant period, so as to be liable to tax, and the learned Tribunal has

considered, that tax liability cannot be attracted merely on the basis of entries in the book keeping unless income is accrued. Thus, in substance the finding of fact, is to the effect, that the assessee did not earn the income, which has been deleted by the Tribunal by the impugned order. In that view of the matter, the question No.1 as framed, is answered accordingly, and it is held that the conclusion of the Tribunal was correct.

Coming to question No.2, this again is a question of fact, inasmuch as, may be that there is a stipulation in the lease agreement, about it being the lessor's liability to pay the insurance premium, but then the fact does remain, that the question required to be gone into was, as to whether the premium was actually paid by the assessee, or by the lessee, and since the assessee had claimed that the premium was paid by the assessee, the liability to pay tax, on the above principles, considered while deciding question No.1, cannot be fastened on the assessee.

This question is, accordingly, answered against the Revenue.

Then coming to questions No.3 and 4, on this aspect, the matter has already been remanded by the CIT(A) to the Assessing Authority, which order had been affirmed. It is not in dispute that the question is required to be

examined on the anvil of the provisions of Section 64, and for that purpose, the matter has already been remanded. Therefore, we need not go into the question as framed by this Court. The questions are, accordingly, not required to be answered, and are not answered.

The net result of the aforesaid discussion is that the appeal is devoid of merit, and is dismissed.

(DEO NARAYAN THANVI), J.

(N P GUPTA), J.

/tarun/