IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPL. No. 30 of 2003

CIT UDAIPUR
V/S
HINDUSTAN ZINC LIMITED

Mr. K.K. SHAH, for the appellant / petitioner

Mr. ANJAY KOTHARI, for the respondent

Date of Order : 22.11.2007

HON'BLE SHRI N P GUPTA,J.
HON'BLE SHRI MUNISHWAR NATH BHANDARI,J.

ORDER

This appeal has been filed against the judgement of learned Income Tax Tribunal, Jodhpur Bench dated 06.11.2001, the appeal was admitted vide order dated 16.09.2003 by framing following three substantial questions of law:-

> (1) "Whether on the facts and in the circumstances of the case the Tribunal was justified in deleting the disallowance of Rs. 1,77,16,044/- made u/s 40 A(9) of the I.T. Act on account of payment made to various funds, contributions of clubs, grant to school and hospital etc.?"
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> (2) "Whether on the facts and in the circumstances of the case the tribunal was justified in allowing the claim of interest amounting to Rs. 18,56,32,417/- as revenue expenditure on funds borrowed specifically for the new plant known as Chandaria Unit?"
>
> (3) "Whether on the fact and in the circumstances of the case the ITAT was justified in holding the expenditure of

> Rs. 1,58,77,000/- incurred on technology alternation prior of new unit as revenue expenditure and even if it is held to be so the same was not allowable being it an abortive expenditure because of the fact that the amount was paid as a damag to the contractor as the technology was not found suitable and the contact stood cancelled before the production was stablished?"

We have heard learned counsel for the parties on all the three questions and have perused the impugned judgement of the learned Tribunal.

So far as the question No. 1 is concerned, the matter had earlier come before this Court in the case of present assessee, of course relating to different assessment years, and that matter was decided by this Court vide judgement dated 14.12.2004, reported in (2005) 194 CTR page 121, and by that judgement, the orders of the Tribunal were set aside, and the matter was remitted back to the Tribunal for deciding the claim afresh.

In our view, in view of the aforesaid judgement of this Court, the matter is required to be remitted back to the Tribunal for deciding this question No. 1 afresh on lines given in the aforesaid judgement dated 14.12.2004.

So far as question No. 2 is concerned, this question stands already decided against revenue by another

judgement of this Court on 17.07.2003 in the case of present assessee itself, rendered with respect to the controversy involved in different assessment years. This judgement is reported in (2004) 269 ITR page 369. For the reason given in the aforesaid judgement, in our view, this question is also required to be answered against the revenue, and is accordingly, answered.

So far as question No. 3 is concerned, the learned Tribunal itself has observed that in view of the orders of the Subordinate Authorities, the amount was treated as capital expenditure, and the assessee was allowed for depreciation on this amount @ of 12.5% over a period of eight years. If the the contention of assessee is accepted, to treat as revenue expenditure, even in that event, the assessee would have been entitled to deduction in one assessment year, relevant to the previous year, in which the expenditure was incurred, while if even if it is, treated to be capital expenditure, in that event also, the assessee has received the benefit of tax, by being allowed depreciation over a period of eight years. It has also been found by the learned Tribunal that rate of tax on the company is uniform.

Obviously, therefore, even if, the tax benefit allowed to the assessee in 1 year, or over a period of eight years, it hardly results into financial loss to

either the assessee or the revenue.

We are of the view that thus this question remains only academic, and need not be decided in this appeal. It is however clarified that since we are not deciding the question on merits, the finding given by the learned Tribunal about the particular expenditure being that of a capital expenditure, need not be treated as precedent.

The appeal is, accordingly partly allowed, in view of the answer given to question No. 1, and the matter is remitted back to learned Tribunal as above.

(MUNISHWAR NATH BHANDARI),J. (N P GUPTA),J.

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