Court No. - 35

Case :- INCOME TAX APPEAL No. - 140 of 2008

Appellant :- The Commissioner Of Income Tax And Another
Respondent :- M/S Modi Olivetti Ltd.
Counsel for Appellant :- A.N.Mahajan
Counsel for Respondent :- Piyush Agrawal

Hon'ble Bharati Sapru,J.
Hon'ble Vinod Kumar Misra,J.

Heard Sri Krishna Agarwal, learned Counsel for the department and Sri P.K.Misra, learned Counsel for the assessee.

This is a department's appeal under Section 260-A of the Income Tax Act, 1961 against the order of the Tribunal 05.10.2007 for the assessment year 1997-98. Two questions of law have been sought to be answered, which reads as under:-

"1. Whether on the facts and in the circumstances of the case, the Tribunal is justified in allowing Rs.6,76,168/- being Order Procurement Commission ignoring the fact that the said expenses related to earlier years and the assessee was maintaining mercantile system of accounting ?

2. Whether on the facts and in the circumstances of the case, the Tribunal is justified in law in allowing relief of Rs.55,93,000/- on account of bad debts written off ignoring the facts that the onus to prove the debt had become bad, lay on the assessee which was not discharged by the assessee?"

Insofar as the first question is concerned, there are concurrent judgements of the Commissioner (Appeals) as well as the Tribunal with regard to the facts of the case, which show that the Company has been following the system of accounting as per which the service charges received during the relevant year to the extent that they related to the period of contract pertaining to the financial year were being recognized as income and which has been accepted in the past. The assessee had relied on the judgement of Hon'ble Apex Court in the case of **ED Sassoon and Co. Ltd. (26 ITR 27)** in which it has been held that income can be said to accrue to the assesssee only when the assessee had acquired a right to receive the amounts.

The assessee was able to explain this system before the appellate authority and which has been accepted on facts by the Tribunal and it is for this reason that the addition of the amount made by the assessing officer was deleted.

The facts as stated by the assessee were not disputed by the assessing officer. The system being used by the assessee was regularly followed and accepted in the earlier years. The additions were, therefore, rightly deleted and relief was given to the assessee. The first question, therefore, is answered in favour of the assessee and against the department.

Insofar as the second question is concerned, this issue too has been settled by Hon'ble Apex Court in the case of **T.R.F.Ltd vs. Commissioner of Income Tax** reported in **(2010) 323 ITR 397 (SC)** wherein the Apex Court allowed the assessee to write off a debt when it has become irrecoverable. In the present case there is a finding of fact that bad debt was actually written off in the books of account of the assessee.

Learned Counsel for the assessee has also drawn the attention of this Court to a circular no.12/2016, Dated: May 30, 2016, the circular also states that *"after 1.4.1989 for allowing deduction for the amount of any bad debt or part thereof under section 36(1) (vii) of the Act, it is not necessary for assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the books of account of the assessee."* The department is bound by its own circular.

In view of the above facts and circumstances of the case as well as the judgement and circular as referred above, the question of law does not arise at all, the question no.2 is too answered in favour of the assessee and against the department.

This appeal has no merit, it is dismissed. No costs.

Order Date :- 18.11.2016
S.P.

(Vinod Kumar Misra,J.) (Bharati Sapru,J.)