

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH, JAIPUR
O.R.D.E.R

D.B. Income Tax Appeal No.150/2016
Principal Commissioner of Income Tax, Jaipur-2
Vs.
M/s. Rajasthan State Beverages Corpn. Ltd.

Date of Order: 04/08/2016

HON'BLE MR. JUSTICE AJAY RASTOGI

HON'BLE MR. JUSTICE J.K. RANKA

Mr. Nikhil Simlote Adv., for appellant.

1. Instant income tax appeal u/Sec.260A of the Income Tax Act (in short, 'the Act') is directed against the order dt. 06.11.2015 passed by the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (in short 'the Tribunal') it relates to the assessment year 2009-10.

2. Counsel for the revenue at the outset conceded that the main question about the claim of privilege fees amounting to Rs.26.00 Crores and claim of deduction u/Sec. 36 (1) (va) amounting to Rs.17,80,765/- has been considered by this Court in assessee's own case in a bunch of cases vide judgment/order dt.26.05.2016 in DB Income Tax Appeal No.99/2009 Commissioner of income Tax Vs. M/s. Rajasthan State Ganganagar Sugar Mills Ltd. & D.B. Income Tax Appeal No.66/2015, Principal Commissioner of Income Tax Vs. M/s. Rajasthan State Beverages Corpn. Ltd., which relates to the assessment years 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 & 2008-09 respectively.

3. However, he sought to raise one more question relating to bad debt to the extent of Rs.12,79,968/- which was written off by the assessee in its books of account as the assessee was unable to prove as to how it became a bad debt and no efforts were made by the assessee for recovery of the said amount and no explanation was offered in this regard and merely writing off in the books of account was not justified as it had to be proved by acceptable evidence that debt became bad and in view of this fact the finding of the Tribunal in deleting the addition is perverse and contended that substantial question of law does arise.

4. We have heard the counsel for the appellant and have perused the material available on record.

5. So far as the question relating to privilege fees amounting to Rs.26.00 Crores in the instant year as well as the deduction of claim of Rs.17,80,765/- on account of Provident Fund (PF) and ESI is concerned, this Court has extensively considered the aforesaid two questions in assessee's own case vide judgment and order dt.26.05.2016 referred to (supra) and has held that the privilege fees being a revenue expenditure, is required to be allowed as a revenue expenditure. This court in the aforesaid case has also allowed the claim of the assessee, in so far as payment of PF & ESI etc. is

concerned, on the finding of fact that the amounts in question were deposited on or before the due date of furnishing of the return of income and taking in consideration judgment of this Court in Commissioner of Income Tax Vs. State Bank of Bikaner & Jaipur and Commissioner of Income Tax Vs. Jaipur Vidyut Vitaran Nigam Ltd. (2014) 363 ITR 70 (Raj.) and accordingly both the questions are covered by the aforesaid judgment and against the revenue.

6. In so far as the claim about bad debt of Rs.12,79,968/- is concerned, we notice that the said amount relates to debit balances of the supplier which remained outstanding since 2005-06 and 2007-08 and it was the claim of the assessee that the advances were given to the suppliers for business purposes but supply of liquor was not received and there is a finding of fact recorded by the CIT (A) as well as the Tribunal and could not be disputed by the counsel for the Revenue that the amounts were old and outstanding and the said amount was written off in accordance with the provisions contained in Sec.36 (1) (VII) of the Act. The CIT (A) as well as the Tribunal has taken into consideration the judgment of the Apex Court in the case of T.R.F. Ltd Vs. CIT : (2010) 323 ITR 397 and recorded a finding of fact that the said amount having become irrecoverable, the assessee has rightly written off the same and merely because the assessee has not filed any claim, that could not be considered to be a ground for

disallowing a bad debt.

6.1. Admittedly, the amounts were lying outstanding for the last couple of years and the assessee has rightly written off the said amount in the books of account and merely because a suit was not filed and that cannot be considered to be a cogent reason to disallow the claim which became bad. One need not incur good money for recovery of the so called irrecoverable or a bad money and file a suit which remains pending for years and with uncertainty.

7. In the light of the judgment in assessee's own case, the first two questions being covered against the revenue, no more remains substantial question of law which can be considered by this court and so far as question of bad debt is concerned, essentially it is based on a finding of fact and no substantial question of law can be said to emerge out of the order of the Tribunal.

8. Accordingly, the appeal being devoid of merit, is hereby dismissed.

(J.K. RANKA), J.

(AJAY RASTOGI), J.