M/s. Patnaik and Co. Ltd.

Vs

Commissioner of Income-Tax, Orissa

Civil Appeal No. 1359 (Nt) of 1974

(R. S. Pathak, Sabyasachi Mukharji JJ)

16.07.1986

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Orissa and raises the familiar question whether a loss suffered by the assessee is a capital loss or a revenue loss.

2. The assessee deals in automobiles and also sells spare motor parts. For the assessment year 1963-64, the relevant accounting period being the year ended March 31, 1963, the assessee claimed a loss of Rs. 53,650 sustained by it on disposing of its subscription to the Orissa Government Floated Loan, 1972. It claimed that the loss suffered by it was revenue loss and, therefore deductible against its profits for the year. The Income Tax Officer disallowed the loss in the view that it was a capital loss. The assessee's appeal was dismissed by the Appellate Assistant Commissioner of Income Tax. But on second appeal the Income Tax Appellate Tribunal accepted the contention of the assessee that the subscription to the Government Loan was conducive to its business and that the loss arose in the course of the business, and that, therefore, the assessee was entitled to a deduction of the loss claimed by it. The Accountant Member and the Judicial Member wrote separate but concurrent orders. At the instance of the revenue the Appellate Tribunal referred the case to the High Court of Orissa for its opinion on the following question of law :

> Whether, in the facts and circumstances of the case, the loss of Rs. 53,650 sustained by the assessee on the sale of the Government Loan is a capital loss or a revenue loss ?

3. Disagreeing with the findings of the Appellate Tribunal the High Court held that the loss was a capital loss and accordingly answered the reference in favour of the revenue and against the assessee.

4. At the outset, we find it necessary to note that the High Court has taken the view that the factual substratum of the case has been misconceived by the Appellate Tribunal and that it is, therefore, entitled to re-examine the evidence and arrive at its own findings of fact. We think the High Court fell into serious error in doing so. It is now well settled that the Appellate Tribunal is the final fact-finding authority under the Income Tax Act and that the court has no jurisdiction to go behind the statements of fact made by the Tribunal in its appellate order. The court may do so only if there is no evidence to support them or the Appellate Tribunal has misdirected itself in law in arriving at the findings of fact. But even there the court cannot disturb the findings of fact given by the Appellate Tribunal unless a challenge is directed specifically by a question framed in a reference against the

validity of the impugned findings of fact on the ground that there is no evidence to support them or they are the result of a misdirection is law. There is a long line of cases decided by this Court laying down this proposition. See India Cements Ltd. v. CIT [(1966) 60 ITR 52, 64 : (1966) 2 SCR 944 : AIR 1966 SC 1053], Hazarat Pirmohamed Shah Saheb Raza Committee v. CIT [(1967) 63 ITR 490, 495-6 (SC)], CIT v. Greaves Cotton & Co. Ltd. [(1968) 68 ITR 200 (SC)], CIT v. Meenakshi Mills Ltd. [(1967) 63 ITR 609, 613 : (1967) 1 SCR 934 : AIR 1967 SC 819], CIT v. Madan Gopal Radhey Lal [(1969) 73 ITR 652, 656 : (1969) 2 SCC 457 : (1969) 2 SCR 7 : AIR 1969 SC 840], Hooghly Trust (Pvt). Ltd. v. CIT [(1969) 73 ITR 685, 690 : (1969) 1 SCC 535 : (1969) 3 SCR 557 : AIR 1969 SC 946], CIT v. Imperial Chemical Industries (India) Ltd. [(1969) 74 ITR 17 : (1969) 1 SCC 629 : (1969) 3 SCR 804 : AIR 1969 SC 1160] and Aluminium Corpn. of India Ltd. v. CIT [(1972) 86 ITR 11 : (1972) 4 SCC 37 : 1973 SCC (Tax) 33]. The High Court has relied on CIT v. S.P. Jain [(1973) 87 ITR 370 : (1973) 3 SCC 824] to justify its re-examination of the evidence and to supersede the findings of fact rendered by the Appellate Tribunal by findings of fact reached by itself. In that case, however, the questions raised in the reference before the High Court included questions specifically challenging the findings of fact reached by the Appellate Tribunal as being invalid in law. In the present case the question referred to the High Court was framed on the assumption that it had to be decided in the factual matrix delineated by the Appellate Tribunal : In the circumstances, the findings of fact set forth in the judgment of the High Court must be vacated. We would have sent the case back to the High Court requiring it to answer the question of law referred to it on the basis of the facts found by the Appellate Tribunal but we refrain from doing so and propose to dispose of the reference ourselves on the statements of fact contained in the appellate order of the Appellate Tribunal. The case has remained pending through its successive stages for the last over 20 years, and it is appropriate that it should be disposed of now without further delay.

5. According to the statement of the case drawn up on the basis of the appellate order of the Appellate Tribunal the assessee was told that if it subscribed for the Government Loan preferential treatment would be granted to it in the placing of orders for motor vehicles required by the various government departments and to the further benefit of an advance from the government up to 50 per cent of the value of the orders placed. Pursuant to that understanding, an advance to the extent of Rs. 18,37,062 was received by the assessee and a circular was also issued by the State Government to various departments to make purchases of the vehicles required by them from the assessee. Because of the advance received from the government, the assessee was able to save Rs. 45,000 as bank interest during the year. It was also noticed that the sales shot up substantially. On September 4, 1961 the assessee made a deposit of Rs. 5 lakhs consequent upon a Resolution of the Board of Directors passed about 6 weeks before after a statement made by the Chairman during the Board meeting that the government had approached him to subscribe to the Government Loan and that the company should do so as goods orders could be expected. The purchase of the loan was approved by the Board of Directors and was ratified in the Annual General Meeting of the shareholders held on December 31, 1961. The Appellate Tribunal found that having regard to the sequence of events and the close proximity of the investment with the receipt of government orders the conclusion was inescapable that the investment was made in order to further the sales of the assessee and boost its business. In the circumstances, the Appellate Tribunal held that the investment was made by way of commercial expediency for the purpose of carrying on the assessee's business and that therefore, the loss suffered by the assessee on the sale of the investment must be regarded as a revenue loss. We are of opinion that the Appellate Tribunal is right.

6. The High Court, as has been mentioned, re-examined the facts on the record and found that the investment was not connected with the orders placed by the government with the assessee and the advance payment made by the government departments to the assessee, and it was in that context

that the High Court held that the investment in the loan was a capital asset and the loss was a capital loss. The High Court took the view that the investment was of enduring benefit to the assessee and therefore it could not be allowed. We find it difficult to hold that an enduring benefit was brought about by the assessee investing in the loan. So far as orders from the government departments were concerned the material on record shows that on August 30, 1961 it was decided to purchase 16 jeeps, 8 trucks and 4 one-tonne pick-up vans. There is nothing to show that there was any reason for the assessee to hold on to the investment in the loan indefinitely. There was no enduring advantage. Accordingly we hold that the investment did not bring in an asset of a capital nature, and that in the circumstances of the case the loss suffered by the assessee was a revenue loss and not a capital loss. It was held by the Orissa High Court in CIT v. Industry and Commerce Enterprisers (P) Ltd. [(1979) 118 ITR 606 (Ori)], and by the Madras High Court in Addl. CIT v. B.M.S. (P) Ltd. [(1979) 119 ITR 321 (Mad)], and again in CIT v. Dhandayuthapani Foundary (P) Ltd. [(1980) 123 ITR 709 (Mad)], that where government bonds or securities were purchased by the assessee with a view to increasing his business with the government or with the object of retaining the goodwill of the authorities for the purpose of his business, the loss incurred on the sale of such bonds or securities was allowable as a business loss.

7. We hold that the High Court has erred in the view taken by it and that the Tribunal was right in allowing the appeal.

8. In the result the appeal is allowed, the judgment of the High Court is set aside and inasmuch as the loss is a revenue loss the question referred to the High Court is answered in favour of the assessee and against the Revenue. The assessee is entitled to its costs of this appeal.

</html