SUPREME COURT OF INDIA

Bhuna Cooperative Sugar Mills Limited

Vs.

Commissioner of Income Tax, Rohtak

C.A.Nos.1100-1101 of 2005

(N.Santosh Hedge and S.B.Sinha JJ.)

11.02.2005

JUDGMENT

N.Santosh Hegde, J.

1. The appellant, a cooperative sugar Mill, filed its return of income for the assessment year 1992-93 declaring a loss of Rs. 6,95,63,045.72. While computing the said loss the appellant declared in its return a sum of Rs. 1,48,38,263.88 as interest which had accrued for the relevant assessment year which was payable to the creditors and had been debited in the profit and loss account, hence, sought for its deduction. A return claiming similar losses were also filed for the Assessment Year 1993-94. The assessing officer processed the returns filed by the Appellant under section 143(1)(a) of the Income Tax Act (the Act) and disallowed the deduction of Rs. 1,48,38,263.88 claimed by the appellant on account of interest payable to the creditors. He also imposed a penal additional tax of Rs. 11,62,502 under section 143(1)(a) of the Act. Being aggrieved by the said order of assessment the appellant preferred an appeal before the Commissioner of Income Tax (Appeals), Rohtak. The said appeal filed by the appellant came to be allowed. The said order of the Appellate Commissioner was challenged by the Revenue before the Income Tax Appellate Tribunal, Delhi, which allowed the appeal of the tribunal setting aside the order of the Appellate Commissioner. It restored the order of the assessing authority. Consequent to the said order of the tribunal the appellant also received a demand notice directing it to deposit the additional tax imposed. The appellant challenged the order of the tribunal as well as the demand notice in regard to the additional tax payable by way of appeals and writ petitions which came to be dismissed by the impugned order of the High Court, hence, the appellant is before us in these appeals.

2. The main contention of the appellant herein is that it is entitled to deduction of interest payable on the loans taken by it from bodies other than the financial institutions as provided under Section 43B of the Act. Learned counsel submitted that the tribunal as well as the High Court on an erroneous appreciation of fact and without giving an opportunity to the appellant to establish its case came to the conclusion that the money borrowed by the appellant, was from the institutions enumerated in Section 43B(d), hence, disallowed the deduction. In support of this contention learned counsel pointed out from the order of the tribunal that it

had noted that the loan taken by the appellant was from Haryana Financial Corporation (HFC) which according to the appellant is wholly incorrect and the appellant had not taken any such loan from Haryana Financial Corporation. On the contrary, the loans taken by it were all from IFCI, IDBI, ICICI and Harcoo Bank under the act interest payable to these banks are entitled to deduction. It was contended that clause (e) of Section 43B will have no application as the said provision was introduced by the Finance (No) 2 Act, 1996 with effect from 1.4.1997. Learned counsel for the appellant also argued that in view of the fact that it had succeeded before the Commissioner of Income Tax (Appeals) on other grounds there was no need for it to have challenged the levy of additional tax. Learned counsel also argued that the appellant had specifically raised a ground as to the non applicability of section 141(1)(A) and the consequent demand made by payment of additional tax, but the High Court without dealing with this objection of the appellant proceeding to agree with the tribunal without properly considering the material available before it as to the entitlement of the appellant for deduction of interest payable. It is also contended that the High Court did not apply its mind as to the liability of the appellant to pay the additional tax and proceeded to dismiss its appeals and petition without considering all aspects of the case.

3. Learned counsel for the Revenue submitted that the appellant had not produced any material to show that the institution from which it had taken loans were institutions other than those enumerated in sub-section (d) of section 43B of the Act, therefore, unless the appellant proves that such interest had actually been paid, it was not entitled to claim deduction on interest which is only payable. It was further submitted on behalf of the Revenue that though a factual error was made by the tribunal in noting that the loan taken was from HFC it had really not affected the legality of the order of the tribunal because the appellant had failed to establish that the institutions from which it had taken the loan are those which would not fall within the institutions mentioned in sub-section (d) of section 43B. Therefore, the authorities below were justified in rejecting the prayer of the appellant for deduction of interest as also were justified in levying the additional tax under section 141(1)(A) of the Act.

4. Having heard learned counsel and having perused the records we think there was some confusion in the mind of the tribunal when it proceeded to consider the case of the appellant for deduction on a ground that the loan in question was taken from HFC which is a Bank contemplated under Section 43B(d) and since the appellant contends that it has material to show that the loan taken by it and the interest payable to institutions which would not fall within sub-section (d) of section 43B, in the interest of justice we think an opportunity should be given to the appellant to prove its case. We also think that since the tribunal or the High Court have not taken into consideration the contention of the appellant in regard to the liability to pay additional tax under section 141(1)(A) of the Act, an opportunity should be given to the appellant to argue its case on this issue also.

5. We may note herein that learned Counsel for the appellant relied on a judgment of this Court in the case of Commissioner of Income Tax, Bhopal vs. Hindustan Elector Graphites Ltd., Indore) while the learned counsel for the Revenue relied on a judgment of this Court in the case of Asstt. Commissioner of Income Tax, New Delhi vs. J.K. Synthetics Ltd. etc.).

6. In the view of the fact that we are remanding the matter to the tribunal we do not think that we should express any view as to the applicability of these judgments. We have it to the tribunal to consider the same.

7. For the reasons stated above, these appeals succeed, the matters are remanded to the Income Tax Appellate Tribunal, Delhi Bench 'E', New Delhi or its successor. The impugned orders of the tribunal in appeal and that of the High Court in appeals and writ petitions are set aside.

8. Ordered accordingly.