SUPREME COURT OF INDIA

Commissioner of Income Tax Cochin

Vs.

Travancore Cochin Udyoga Mandal

C.A.No.2015 of 2007

(R.K.Agrawal and Abhay Manohar Sapre,JJ.,)

17.08.2017

JUDGMENT

Abhay Manohar Sapre,J.,

1.This appeal is filed by the Revenue against the final judgment and order dated 20.05.2005 passed by the High Court of Judicature of Kerala at Ernakulam in ITA No. 166 of 2000 whereby the High Court dismissed the appeal filed by the appellant herein holding that the claim for deduction of lease rent made by the respondent (assessee) in their Income Tax Return is allowable in that assessment year wherein the dispute relating to lease rent has attained finality and not in the assessment year wherein the lease rent was fixed by the Government.

2. Few facts need to be mentioned infra to appreciate the short controversy involved in the appeal.

3. The respondent is an assessee under the Income Tax Act. The State Government, in the year 1965, acquired the land measuring 46.79.250 acres in Varapuzha Village (now Eloor Village) of Parur Taluk, District Ernakulum. Out of the acquired land, the State allotted 43.45.250 acres of land to the respondent for setting up of the factory.

4. By order (G.O. Ms. 576/88/RD) dated 25.06.1988, (Annexure-P-1), the State Government fixed the lease rent of the demised land payable by the respondent to the State. The respondent felt aggrieved of the fixation of the lease rent made by the State as, according to them, it was on higher side. The respondent, therefore, objected to the fixation made by the State Government vide order dated 25.06.1988 and prayed for its suitable reduction. By order dated 07.11.1991, the State Government rejected the respondent's request and maintained the order dated 25.06.1988 which had originally fixed the lease rent.

5. It is with these background facts, the respondent filed their Income Tax Return for the Assessment Year 1992-93. In the Return, the respondent claimed deduction of accumulated lease rent amounting to Rs.97,69,077/-. The Assessing Officer by order dated 28.02.1995

while dealing with the claim in question disallowed the deduction claimed by the respondent. In his opinion, such deduction could not be claimed in the Assessment Year 1992-93 but it could be claimed only in the Assessment Year 1989-90.

6. The respondent, felt aggrieved of the disallowance, filed appeal before the Commissioner of Income Tax (Appeals) II, Cochin. In appeal, the contention of the respondent (assessee) was that they claimed the deduction of the lease rent amount (Rs.97,69,077/-) in the Assessment Year 1992-93 because, according to them, the lease rent issue was sub judice with the State at the instance of the respondent wherein the order dated 25.06.1988 passed by the State was challenged seeking re-fixation and reduction in the lease rent. It was contended that the State eventually decided the issue on 07.11.1991 and maintained their earlier order dated 25.06.1988. The respondent, therefore, claimed deduction of the said amount in the Assessment Year 1992-93 no sooner the issue in relation to fixation of lease rent was finally decided by the State.

7. The CIT (appeal) by order dated 30.06.1995 did not agree with the explanation given by the respondent and accordingly dismissed their appeal and confirmed the order of the Assessing Officer by upholding the disallowance. He also held that the liability to claim deduction was accrued to the respondent in the Assessment Year 1989-90 itself for two reasons, first, the respondent follows the mercantile system of accountancy and second, the lease rent had been fixed by the State on 25.06.1988. It was accordingly held that since the respondent though was in a position to claim deduction of the lease rent in the Assessment Year 1989-90 and yet failed to claim, it was not permissible for them to claim in future Assessment Year (1992-93). It was without any legal basis.

8. The respondent, felt aggrieved, carried the matter in second appeal before the Tribunal. By order dated 13.09.1999, the Tribunal allowed the respondent's appeal and set side the orders of assessing authority and CIT (appeal). It was held that since the respondent was following the mercantile system of accountancy and the liability in relation to the rent in question though accrued in 1989-90 was in dispute before the State Government, the same could be claimed only in that Assessment Year wherein the dispute was settled by the State. It was noted that the dispute was settled by the State Government by rejecting the respondent's prayer to revise the rent on 07.11.1991. The deduction in respect of lease rent therefore could be claimed in the Assessment Year 1992-93. The Tribunal accordingly allowed the deduction claimed by the respondent in the Assessment Year 1992-93

9. The Revenue, felt aggrieved, filed appeal before the High Court. By impugned order, the High Court dismissed the Revenue's appeal and affirmed the order of the Tribunal, giving rise to filing of the appeal by the Revenue.

10. Heard Mr. K. Radhakrishnan, learned senior counsel for the appellant and Mr. Ritin Rai, learned counsel for the respondent.

11. Mr. K. Radhakrishnan, learned counsel for the appellant (Revenue) while assailing the legality and correctness of the impugned order contended that the liability in regard to

fixation of lease rent by the respondent to the State was essentially a statutory liability because according to learned counsel it was determined, fixed, payable and lastly recoverable under the Kerala Land Assignment Act, 1960 (hereinafter referred to as "the Act") read with two Rules framed in exercise of powers conferred under Sections 3 and 7 of the Act called, "The Kerala Land Assignment Rules 1964" and "The Rules for Assignment of Government Land for Industrial Purposes" (hereinafter referred to as "the Rules"). It was, therefore, his submission that since the liability to determine, fix, pay and recover the lease rent is a statutory in nature and secondly, the respondent is following mercantile system of accountancy in their business for paying the taxes, the liability to pay such dues once accrued, which in this case was accrued on 25.06.1988, the deduction could be claimed in the same Assessment Year, i.e., 1989-90. Learned counsel urged that since the respondent failed to claim the deduction in the Assessment Year 1989-90, they had no right to claim such deduction in any subsequent assessment year much less in Assessment Year 1992-93. Learned counsel then referred extensively to the provisions of "The Act" and "The Rules" to show that the fixation of the rent is statutory and not contractual.

12. In reply, learned counsel for the respondent (assessee) supported the impugned order and contended that it does not call for any interference. It was also his submission that the argument now being raised by the learned counsel for the appellant in the appeal was never raised by them at any stage of the proceedings in Courts below and hence either it should not be entertained or if entertained, the same cannot be answered either way unless the respondent is given an opportunity to rebut it with reference to documents with a view to show that the fixation of rent is contractual and not statutory as contended by the Revenue. According to the learned counsel, this being a mixed question of fact and law it can be decided in first instance either by the CIT or Tribunal.

13. Having heard the learned counsel for the parties at length and on perusal of the record of the case, we are of the view that having regard to the nature of issue involved which is a mixed question of law and fact, it would be just and proper to remand the case to the Tribunal for deciding the issue afresh on merits.

14. The need to remand the case to the Tribunal, has occasioned because firstly, the question as to whether the fixation of rent and its payment is statutory or contractual and, if so, its effect while claiming deduction under the Income Tax Act and, if so, in which year of assessment is a mixed question of law and fact. Secondly, it was neither decided by any of the authorities below and nor by the Tribunal and the High Court. It may be that since the Revenue itself did not raise it before the authorities below and raised it for the first time before this Court by simply placing reliance on the provisions of the Act and the two Rules mentioned above, this Court cannot decide the same in this appeal, for the first time for want of factual material and legal issues attached to it.

15. In our considered opinion, in order to decide the issue of deduction, the nature of fixation of rent, its payment, recovery etc. and whether it is statutory or contractual, has some bearing over the question. It is also clear that the respondent did not get any chance to meet this

submission before the courts/authorities below. It is for these reasons, we are of the view that the matter needs to be remanded to the Tribunal for its proper adjudication.

16. The Tribunal being the last adjudicatory authority in hierarchy on facts would be in a better position to decide the issue after taking into account the documents filed by the parties in support of their respective contentions. Depending upon the decision of the Tribunal, the parties can carry the matter to the higher Courts.

17. We, therefore, at this stage refrain from expressing any opinion on the merits of the case and nor consider it proper to record any finding on the submissions urged either way except to record the submissions of the parties for appreciating the issues urged and leave it to the Tribunal to decide, its applicability and relevancy in accordance with law.

18. The appeal thus succeeds and is allowed. The impugned order and the order of the Tribunal are set aside.

19. The case is remanded to the Income Tax Appellate Tribunal, Cochin Bench, Cochin for deciding the appeal filed by the respondent being I.T.A. No. 673 (Coach)/1995 afresh on merits in accordance with law. Parties are, however, granted opportunity to file relevant documents in support of their submissions, if they so desire, to enable the Tribunal to decide the appeal as directed.

20. Let the appeal be decided within six months from the date of the appearance of the parties. Parties to appear before the Tribunal on 18 th September, 2017.