



* THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 11.07.2011

+ ITR No. 66/1995

COMMISSIONER OF INCOME TAX, CENTRAL-II PETITIONER

Vs

M/s DCM LIMITED RESPONDENT

Advocates who appeared in this case:

For the Petitioner : Mr Kamal Sawhney, Advocate

For the Respondent: Mr S.K. Aggarwal, Advocate

CORAM :-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment ? | No |
| 2. | To be referred to Reporters or not ? | No |
| 3. | Whether the judgment should be reported in the Digest ? | Yes |

RAJIV SHAKDHER, J (ORAL)

1. The captioned reference has been made at the behest of the revenue. The reference pertains to assessment year 1981-82. By virtue of the said reference we have been called upon to adjudicate on the following question of law:

“(i) Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was correct in law in allowing the corresponding liability against



excise duty collected from customers as deduction when the decision of the High Court upholding the levy has been challenged by the assessee in the Supreme Court?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing the deduction/provision for property tax payable to the extent of 7,73,636/-?

(iii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in law in allowing as revenue expenditure expenses incurred on tours for the purpose of project and for expansion of existing business?"

QUESTION NO. (i)

2. The brief facts pertaining to the aforementioned question are that the assessee had been collecting excise duty on the goods sold by it out of the State of Uttar Pradesh (U.P.). Till the assessment year 1975 the assessee had been paying the excise duty collected from its customers to the concerned authorities. It appears that a challenge was laid by the assessee to the levy of the excise duty, in and around 1975-76, by institution of a writ petition before the Allahabad High Court. The Allahabad High Court, as an interim measure, had granted a stay; as a consequence of which the assessee continued to credit the amount to a separate account. It is not disputed that the Allahabad High Court finally, on 13.03.1980 decided the issue against the assessee.



2.1 The assessee being aggrieved, preferred an appeal to the Supreme Court. It is stated; (a fact which also borne out from the orders of the authorities below) that the Supreme Court granted an ad-interim stay.

2.2 To be noted that both counsels could not supply us either the registration number of the proceeding instituted in the Supreme Court nor were they able to apprise us about the final outcome of the proceedings in the Supreme Court.

2.3 Continuing with the narrative, it is in these circumstances that the Assessing Officer came to the conclusion that the amount received towards excise duty from its customers was a trading receipt and hence had to be taxed as income.

2.4 Being aggrieved, the assessee preferred an appeal with the Commissioner of Income Tax (Appeals) [hereinafter referred to as 'CIT(A)']. The CIT(A) deleted the addition towards excise duty which was quantified at ₹ 9,84,340/- by the Assessing Officer. In coming to this conclusion, the CIT(A) was persuaded by the assessee's submission that since the Allahabad High Court had rendered its decision in the writ petition against the assessee in the accounting year relevant to the assessment year in question, there was a corresponding trading liability and hence, no addition in regard to sums collected towards excise duty received from its customers could be made vis-a-vis the assessee.



2.5 The Tribunal sustained the view taken by the CIT(A). The Tribunal noted that the receipt was neutralized by accrual of liability of an equivalent amount against the assessee.

2.6 During the course of arguments Mr S.K. Aggarwal, who appears for the assessee accepted the fact that the amount received from the customers towards excise duty was a trading receipt. If this position is accepted then the fact that the matter was pending before the Supreme Court and a stay was operating against the decision of the Allahabad High Court attained significance. As indicated above, both counsels were unable to inform us as regards the outcome of the proceedings in the Supreme Court. In these circumstances, we are of the view that, given the facts available on record, the order of the Tribunal cannot be sustained. The decision taken by the Assessing Officer will, therefore, continue to operate. Accordingly, the question of law is answered in the negative and against the assessee.

QUESTION NO. (ii)

3. The brief facts pertaining to question no.(ii) are as follows: The municipal corporation had proposed an enhancement in the rateable value. The rateable value proposed was a sum of ₹ 25,36,640/-. On the said proposed rateable value property tax payable was a sum of ₹ 9,24,514/-. The assessee disputed the proposed enhancement in the rateable value as communicated to



it by the municipal corporation. The assessee maintained that the rateable value ought to be ₹ 4,47,760/-/- on which it would be liable to pay towards property tax a sum of ₹ 1,50,878/-.

3.1 The assessee, however, while objecting to proposed enhancement in the rateable value, sought deduction in respect of the entire amount, though not paid in view of the decision of the Supreme Court in the case of *Kedarnath Jute Mfg. Co. Ltd. vs Commissioner of Income Tax (1971) 82 ITR 363*.

3.2 The Assessing officer rejected the claim for deduction on the ground that the enhancement of rateable value was a mere proposal, it had not been accepted by the assessee. He, therefore, allowed the deduction to the extent agreed to by the assessee while disallowing the remaining amount in respect of which provision had been made, i.e., a sum of ₹ 7,73,636/-

3.3 The assessee being aggrieved preferred an appeal to the CIT(A). The CIT(A) deleted the addition by placing reliance on the Tribunal's decision in favour of the assessee for assessment year 1978-79.

3.4 The Tribunal in a further appeal by the revenue sustained the view taken by the CIT(A). The Tribunal observed that the municipal corporation had proposed an enhancement in the rateable value qua property of the assessee; the dispute with regard to which was pending before the Appellate Authority and



hence, being in the nature of a statutory liability the CIT(A) had allowed the same. On a reading of the CIT(A) order we find that there is no such observation. The CIT(A) had simply followed the earlier view of the Tribunal apparently on the said issue, taken in respect of the assessment year 1978-79; though that may have been the purport.

4. We were informed by Mr S.K. Aggarwal, learned counsel for the assessee, that the revenue's reference was returned unanswered by this court vide its order dated 08.08.2007. Notwithstanding the above, we are of the view that there is no discussion in the order of the Tribunal by reference to provisions of the relevant municipal law to indicate as to whether a mere proposal for enhancement of property tax would result in crystallization of liability qua that portion of rateable value which was sought to be enhanced. There can be no dispute that liability does not cease to exist merely because the quantification of the liability is deferred. From the facts ascertainable from the records, it appears there is a dispute with regard to the quantification as reflected in the proposal for enhancement. Evidently at the stage, at which the proceedings were pivoted in the assessment year in issue, there was no demand raised by the municipal corporation. In these circumstances, the question of law has to be answered in the negative and against the assessee.



QUESTION NO. (iii)

5. The learned counsel for the assessee says that this question is covered by the decision of the Delhi High Court in the case of Delhi Cloth & General Mills Co. Ltd. vs CIT (1986) 158 ITR 64 (Delhi). This position has not been disputed by the learned counsel for the revenue. The question of law is thus answered in the negative and consequently in favour of the assessee.
6. The reference is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

SANJAY KISHAN KAUL, J

JULY 11, 2011
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