IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R.No.38 of 1990

Date of Decision : January 08, 2010

The Commissioner of Income-Tax (Central) Ludhiana

...Appellant

Versus

M/s Aggarwal Steel Rolling Mills, Mandi Gobindgarh

...Respondent

CORAM:HON'BLE MR. JUSTICE JASBIR SINGH
HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Ms. Urvashi Dhugga, Standing counsel,
for the appellant.

Mr. Salil Bali, Advocate,
for the respondent.

HEMANT GUPTA, J.

The Income-Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, has referred under Section 256(1) of the Income Tax Act, 1961 (for short 'the Act'), the following question of law for the opinion of this Court :

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the amount of refunds received by the assessee from the Central Excise Department during the accounting period ended 1.3.1978, were not includible in the assessee's taxable income for the assessment year 1978-79?"

The assessee received a sum of Rs.26,782.22, an account of refund of excise duty during the assessment year 1978-79. Though the cheques of refunds were issued, but the show cause notices were issued to the assessee disputing the refunds. It was the contention of the

assessee that since the issue of refund has not attained finality during the relevant assessment year, therefore, such amount of refund cannot be included as taxable income in terms of Section 41(1) of the Act.

Learned Tribunal relied upon the judgment of the Tribunal in M/s Des Raj Chiranji Lal Steel Rolling Mills (I.T.A.No.428 of 1980 dated 24.2.1982) to return a finding that since the issue of refund has not attained fianlity, therefore, such refund cannot be included as part of the taxable income during the relevant assessment year.

The Revenue has relied upon the judgment of Hon'ble Supreme Court in ***Polyflex (India) Pvt. Ltd. Vs. Commissioner of Income-Tax (2002) 257 ITR 343***, to contend that the date of receipt is relevant to determine the inclusion of the same in taxable income even though the same is being disputed in separate proceedings.

Section 41(1) of the Act as exists during the relevant year reads as under :

> "In the assessment for the relevant year an allowance or deduction has been made in respect of any loss, expenditure or trading liability incurred by the assessee. This is the first step. Coming to the next step the assessee must have subsequently (i) obtained any amount in respect of such loss or expenditure; or (ii) obtained any benefit in respect of such trading liability by way of remission or cessation thereof. In case either of these events happen, the deeming provisions enacted in the closing part of sub-section (1) comes into play. Accordingly, the amount obtained by the assessee or the value of benefit accruing to him is deemed to be profits and gains of business or profession and it becomes chargeable to income-tax as the income of that previous year."

The Hon'ble Supreme Court held that since the assessee has obtained the amount by way of refund in respect of business expenditure incurred by it during the earlier year, it will fall under the earlier clause namely "obtained any amount in respect of such expenditure" rather than the benefit accruing to an assessee on account of cessation or remission of trading liability. It was held to the following effect :

> "We are inclined to think that in a case where a statutory levy in respect of goods dealt in by the assessee is discharged and subsequently the amount paid is refunded, it is the first clause that more appropriately applies. It will not be a case of benefit accruing to him on account of cessation or remission of trading liability. It will be a case which squarely falls under the earlier clause, namely "obtained any amount in respect of such expenditure". In other words, where expenditure is actually incurred by reason of payment of duty on goods and the deduction or allowance had been given in the assessment for earlier period, the assessee is liable to disgorge that benefit as and when he obtains refund of the amount so paid. The consideration whether there is a possibility of the refund being set at naught on a future date will not be a relevant consideration. Once the assessee gets back the amount which was claimed and allowed as business expenditure during the earlier year, the deeming provision in Section 41(1) of the Act comes into plan and it is not necessary that the Revenue should await the verdict of higher court or Tribunal. If the court or Tribunal upholds the levy at a later date, the assessee will not be without remedy to get back the relief."

In view of the aforesaid judgment, the assessee has claimed the benefit of expenditure on excise duty in the earlier years, but the same was refunded during the relevant assessment year. The subsequent show cause notices does not amount to cessation or remission of trading

liability, but receipt on account of expenditure incurred earlier.

Therefore, in view of the aforesaid judgment, which covers the issue in the present case, it is held that the refund of excise duty received during the relevant assessment year, would be taxable in that year and mere show cause notice to dispute such refund cannot be interpreted to mean that income is not taxable during the said year. The assessee shall be entitled to claim expenditure of such excise duty, if it is found payable in pursuance of the show cause notices during the assessment year in which such liability is discharged.

In view of the above, the reference is answered in favour of the Revenue and against the assessee.

(HEMANT GUPTA)
JUDGE

(JASBIR SINGH)
JUDGE

January 08, 2010
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