

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2009

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

and

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Tax Case (Appeal) No.470 of 2004

The Commissioner of Income tax II,
Coimbatore.

Appellant

v.

The Coonoor Tea Estates Company Ltd.,
Coonoor 1.

Respondent

Tax Case Appeal filed under section 260A of the Income tax Act, 1961 against the order of the Income Tax Appellate Tribunal dated 20.10.2003 made in ITA No.2238/Mds/1996.

For appellant : Mr.T.Ravikumar,
Standing Counsel for
Income tax Department

For respondent : Mr.R.Venkata Narayanan, for
M/s. Subbaraya Aiyar

JUDGMENT

(Judgment of the Court was delivered by
K.RAVIRAJA PANDIAN, J.)

This appeal is at the instance of the revenue against the order of the Income Tax Appellate Tribunal dated 20.10.2003 made in ITA No.2238/Mds/1996. for the assessment year 1994-95.

2. The appeal was admitted on the following substantial question of law :
"Whether, on the facts and in the circumstances of the case, the Income tax Appellate Tribunal was right in law in holding that the assessing officer was not justified in disallowing the depreciation on tea bushes while processing the return of income of the assessment year 1994-95 in accordance with the amendment made to the Finance Act, 1995 as per which tea bushes were taken out of the definition of plant?"

3. The facts : The assessee company is engaged in the business of manufacture and sale of tea. For the assessment year 1994-95, the assessee filed its return of income on 30.11.1994

showing a total income of Rs.14,00,230/-. While processing the return under section 143(1)(a) of the Act, the assessing officer found that the assessee had claimed depreciation of Rs.56,03,148/- instead of the correct figure of Rs.7,26,115/-. The definition of plant was modified with retrospective effect by Finance Act, 1995, as per which tea bushes were not considered as plant. The excess claim of depreciation as per working given by the assessing officer was Rs.48,77,033/-. This was added back by way of adjustment under section 143(1)(a) of the Act and the total income was determined at Rs.62,77,260/-, additional tax under section 143(1)(a) at Rs.5,04,772/- was levied consequently.

4. Aggrieved by the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who confirmed the order of the assessing officer. Aggrieved by that, the assessee filed further appeal before the Tribunal by contending that the disallowance of depreciation on tea bushes did not come under the category of 'prima facie' disallowance. Therefore, no adjustment under section 143(1)(a) could be made on that account. Reliance was placed on the decision of the Supreme Court in the case of CIT v. Hindustan Electro Graphites Ltd., 243 ITR 48. The Tribunal, accepting the contention of the assessee, allowed the appeal. The correctness of the same is now canvassed by the revenue in this appeal.

5. We heard the learned counsel on either side and perused the materials available on record.

6. We are of the view that the adjustment made by the assessing officer confirmed by the Commissioner of Appeals cannot be done while processing the assessment under section 143(1)(a) of the Act as the disallowance made by the authority would not come under the category of 'prima facie' disallowance. The law obtaining during the relevant period did not recognise tea bushes as plant and machinery. As such, it is only a debatable issue. It is also a settled principle of law that where a return is filed, the law applicable would be the law as it stood on the date of filing of the return. The retrospective amendment made to the definition of plant introduced by the Finance Act, 1995 for the assessment year 1994-95 was not available to make the disallowance under prima facie adjustment. Useful reference can be had to the decision in the case of CIT v. Hindustan Electro Graphites Ltd., 243 ITR 48.

7. In the light of what is stated above, we do not find any irregularity in the order of the Tribunal for us to take a different view. The question of law is answered in favour of the assessee and against the revenue. The appeal is dismissed. No costs.

(K.R.P.,J.) (M.M.S.,J.)

14.12.2009

Index : Yes

Internet : Yes

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K.RAVIRAJA PANDIAN, J.

and

M.M.SUNDRESH, J.

