Commissioner of Income-tax Vs. Kamalpur (Assam) Tea Estate (P.) Ltd.

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Court : Guwahati

Decided On : Jun-22-1976

Judge : M.C. Pathak, C.J. and Baharul Islam, J.

Acts : Income Tax Act, 1961 - Sections 33, 34 and 34(3)

Appeal No. : Income-tax Reference No. 24 of 1973

Appellant : Commissioner of Income-tax

Respondent : Kamalpur (Assam) Tea Estate (P.) Ltd.

Advocate for Def. : N.M. Lahiri, S.N. Medhi and R.P. Agarwalla, Advs.

Advocate for Pet/Ap. : G.K. Talukdar and D.K. Talukdar, Advs.

Judgement :

Pathak, C.J.

1. The Income-tax Appellate Tribunal, Gauhati Bench (hereinafter referred to as 'the Tribunal'), has referred to the High Court the following question of law under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'):

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee will be entitled to development rebate to the extent of Rs. 15,913 for the assessment year 1963-64 ?'

2. The facts leading to the question of law may briefly be stated as follows:

3. The relevant assessment year is 1963-64. The assessee purchased a dryer as per bill dated August 14, 1961, and the actual cost came to Rs. 1,03,095. The accounting period of the assessee is the calendar year and in the assessment year 1962-63, the total income of the assessee was calculated at Rs. 4,706 and he has shown the net profit as per profit and loss account at Rs. 5,065. The assessee calculated the development rebate allowable for Rs. 1,03,095 at Rs. 25,774 and the statutory reserve required was 75% which came to Rs. 19,330 and, therefore, in the assessment year 1962-63, the assessee did not create the necessary reserve for development rebate. In the assessment year 1963-64, the assessee created the development reserve to the extent of Rs. 20,000. The assessee thus claimed rebate at least to the extent of Rs. 20,000 minus Rs. 4,706, that is to say, the assessee claimed development rebate in the assessment year 196-3-64, to the

extent of Rs. 15,913. The Income-tax Officer did not allow the development rebate to

the assessee in respect of the dryer as the same was installed and brought to use in 1961.

4. The assessee preferred an appeal before the Appellate Assistant Commissioner against the order of the Income-tax Officer. The Appellate Assistant Commissioner held that admittedly in the present case the machinery had been installed and brought to use in 1961 and, therefore, the claim should have been made in the assessment year 1962-63. But, as the claim for the development rebate was not made by the assessee in the assessment year 1962-63 and has not been considered in that assessment year, so no portion of the development rebate could be considered in the assessment year 1963-64. Thus, the claim of development rebate in respect of the dryer was rejected by the Appellate Assistant Commissioner.

5. The assessee then preferred an appeal before the Tribunal. Regarding the development rebate with respect to the dryer the Tribunal held that the assessee was entitled to a development rebate to the extent of Rs. 20,000 minus Rs. 4,706, that is to say, to the extent of Rs. 15,913.

6. On the above facts, the above-mentioned question of law has been referred.

7. In the instant case the finding of fact is that the dryer in question was installed and put to use in 1961 and no reserve was created in 1961 and the development rebate reserve was created only in 1962 to the extent of Rs. 20,000. In the assessment year 1962-63, the income assessed was only at Rs. 4,706 and the profit shown by the assessee as per profit and loss account was Rs. 5,065. The cost of the dryer is Rs. 1,03,095 and the allowable rebate of this sum will be Rs. 25,774. Hence, in order to claim the development rebate the statutory reserve at 75% was required to be created which came to Rs. 19,330. The Tribunal has found that since the statutory reserve required to be created at 75% was Rs. 19,330 and the assessee's income was only Rs. 4,706, the assessee was not in a position to create the necessary reserve in the assessment year 1962-63. The assessee, however, created the development reserve to the extent of Rs. 20,000 in the assessment year 1963-64, The Tribunal has held that since the assessee's income in the assessment year 1962-63 did not permit it to create the required statutory reserve and since it was able to create the reserve to the extent of Rs. 20,000 in the assessment year 1963-64, the development rebate to the extent of Rs. 20,000 minus Rs. 4,706 was allowable in the assessment year 1963-64. The finding of the Tribunal is that the assessee was unable to create reserve in the assessment year 1962-63.

8. Section 33 of the Act deals with development rebate. The relevant provisions of Section 33 of the Act at the relevant time are as follows:

'33. (1) In respect of a new ship acquired or new machinery or plant (other than office appliances or road transport vehicles) installed after the 31st day of March, 1954, which is owned by the assessee and is wholly used for the purposes of the business carried on by him, a sum by way of development rebate, equivalent to--.....

(ii) in the case of machinery or plant installed before the 1st day of April, 1961, twenty-five per cent. and in the case of machinery or plant installed after the 31st day of March, 1961, twenty per cent. of the actual cost of the machinery or plant to the assessee,

shall, subject to the provisions of Section 34, be allowed as a deduction in respect of the previous year in which the ship was acquired or the machinery or plant was installed or, if the ship, machinery or plant is first put to use in the immediately succeeding previous year, then, in respect of that previous year.

(2) In the case of a ship acquired or machinery or plant installed after the 31st day of December, 1957, where the total income of the assessee assessable for the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be, [the total income for this purpose being computed without making any allowance under Sub-section (1)] is nil or is less than the full amount of the development rebate calculated at the rate applicable thereto under that sub-section,--

(i) the sum to be allowed by way of development rebate for that assessment year under Sub-section (1) shall be only such amount as is sufficient to reduce the said total income to nil; and

(ii) the amount of the development rebate, to the extent to which it has not been allowed as aforesaid, shall be carried forward to the following assessment year, and the development rebate to be allowed for the following assessment year shall be such amount as is sufficient to reduce the total income of the assessee assessable for that assessment year, computed in the manner aforesaid, to nil, and the balance of the development rebate, if any, still outstanding shall be carried forward to the following assessment year and so on, so however that no portion of the development rebate shall be carried forward for more than eight assessment years immediately succeeding the assessment year relevant to the previous year in which the ship was acquired or the machinery or plant installed or the immediately succeeding previous year, as the case may be.

Explanation.--Where for any assessment year development rebate is to be allowed in accordance with the provisions of Sub-section (2) in respect of ships acquired or machinery or plant installed in more than one previous year, and the total income of the assessee assessable for that assessment year [the total income for this purpose being computed without making

any allowance under Sub-section (1)] is less than the aggregate of the amounts due to be allowed in respect of the assets aforesaid for that assessment year, the following procedure shall be followed, namely :

(i) the allowance under Clause (ii) of Sub-section (2) shall be made before any allowance under Clause (i) of that sub-section is made ; and

(ii) where an allowance has to be made under Clause (ii) of Sub-section (2) in respect of amounts carried forward from more than one assessment year, the amount carried forward from an earlier assessment year shall be allowed before any amount carried forward from a later assessment year.'

9. The relevant provisions of Section 34 of the Act are quoted below :

'34. (3) (a) The deduction referred to in Section 33 shall not be allowed unless an amount equal to seventy-five per cent. of the development rebate to be actually allowed is debited to the profit and loss account of the relevant previous year and

credited to a reserve account to be utilised by the assessee during a period of eight years next following for the purposes of the business of the undertaking, other than--

(i) for distribution by way of dividends or profits ; or (ii) for remittance outside India as profits or for the creation of any asset outside India :

Provided that this clause shall not apply where the assessee is a company, being a licensee within the meaning of the Electricity (Supply) Act, 1948 (LIV of 1948), or where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958.

(b) If any ship, machinery or plant is sold or otherwise transferred by the assessee to any person at any time before the expiry of eight years from the end of the previous year in which it was acquired or installed, any allowance made under Section 33 or under the corresponding provisions of the Indian Income-tax Act, 1922 (XI of 1922), in respect of that ship, machinery or plant shall be deemed to have been wrongly made for the purposes of this Act, and the provisions of Sub-section (5) of Section 155 shall apply accordingly:

Provided that this clause shall not apply--

(i) where the ship has been acquired or the machinery or plant has been installed before the 1st day of January, 1958 ; or..... '

10. Sub-section (3)(a) of Section 34 of the Act categorically lays down that if an amount equal to 75% of the development rebate to be actually allowed is not debited to the profit and loss account of the relevant previous year and credited to a reserve account to be utilised by the assessee during the period of eight years next following for the purposes of the business of the undertaking other than for distribution by way of dividends or profits or

for remittance outside India as profits or for the creation of any asset outside India, the deduction referred to in Section 33 shall not be allowed.

11. The creation of the reserve as contemplated under Section 34(3)(a) of the Act is found to be a condition precedent for allowing development rebate as contemplated under Section 33 of the Act.

12. If the conditions laid down in Sub-section (3)(a) of Section 34 are not fulfilled by an assesses there is a total bar to allow deduction under Section 33. In the instant case in the relevant assessment year the assessee did not comply with the requirements of Sub-section (3)(a) of Section 34 though it had an income of Rs. 4,706. The assessee, though it did not comply with the requirements of Sub-section (3)(a) of Section 34 in the relevant assessment year, that is, 1962-63, it has created a reserve fund in the assessment year 1963-64 and it has claimed development rebate in the assessment year 1963-64, though the machinery in question was installed in 1961, the corresponding assessment year being 1962-63. The assessee's contention is that it had not sufficient profit in the assessment year 1962-63 to cover the reserve fund at the statutory rate on the total amount of development rebate that is allowable in the assessment year 1962-63, and being put in such predicament the assessee could not comply with the requirements of Sub-section (3)(a) of Section 34 but it had fulfilled the requirements of Sub-section (3)(a) of Section 34 in the following assessment year,

that is, 1963-64. So the assessee, it is contended, should be allowed the development rebate to the extent of the development reserve created minus the income of 1962-63. This contention of the assessee has been upheld by the Tribunal.

13. In Steelsworth (P.) Ltd. v. Commissioner of Income-tax this court, while considering the provisions of Section 33 and Section 34 of the Act observed as follows (pages 22, 23):

'In our considered opinion, however, when the statute confers a benefit on the assessee only on the fulfilment of certain conditions, and the language is clear and unambiguous, unless the assessee has fulfilled those conditions, there is no justification for straining the language of the statute in favour of the assessee for conferring the benefit.

From the record it is found that the Income-tax Officer allowed the development rebate at 35% though the required reserve was not made for the relevant assessment year by his order dated February 20, 1968. But when this apparent mistake was discovered he rectified the same by withdrawing the development rebate of Rs. 12,319 which was wrongly allowed.

On a consideration of the facts and circumstances of the case, we find that the learned Tribunal correctly held that the development rebate of Rs. 12,319 was wrongly allowed by the Income-tax Officer and he was justified in withdrawing the same.'

14. In Additional Commissioner of Income-tax v. Shri Subhlaxmi Mills Ltd. [1975] 100 ITR 188 the Division Bench of the Gujarat High Court, while dealing with Sections 33 and 34 of the Act, has observed as follows (pages 202, 203, 205):

'However, the real question that we have to deal with is whether purely by way of interpretation of Sections 33 and 34 it can be said that the reserve contemplated by Section 34(3)(a) must be created in the year of installation or whether it can be created in the course of any subsequent year so long as it is created during the period of eight years from the year of installation. In our opinion the answer to this question is to be found in Section 33(1) which provides that the development rebate is to be allowed as a deduction in respect of the previous year in which the ship was acquired or new machinery or plant installed and that too subject to the provisions of Section 34. The provisions of Section 34 are not a mere idle formality and they must be complied with if the benefit of the development rebate is to be availed of by an assessee.....

Under these circumstances, our conclusion, on a plain reading of the section, is that the reserve must be created during the year of account being the previous year in which the ship was acquired or the machinery or plant was installed.....

In our opinion, the only possible conclusion that can be drawn by a process of interpretation and that too attributing a grammatical meaning to the words used, is that the reserve contemplated by Section 34(3)(a) must be created before finally making up the profit and loss account of the relevant previous year in which the machinery or plant was installed or the ship was acquired. If it is not so created by debiting the profit and loss account and crediting the necessary amount to a reserve account, the benefit of the development rebate by way of deduction from the income

cannot be allowed and once it is found that it cannot be allowed in the relevant previous year, in the year of assessment relevant for the previous year in which the machinery or plant was installed or the ship was acquired, it cannot be allowed to be carried forward in any subsequent year.'

15. We are in respectful agreement with the above observations of the Gujarat High Court regarding Section 33(1) and Section 34(3)(a) of the Act. In the circumstances we find that the learned Tribunal erred in law in allowing the development rebate to the extent of Rs. 15,913 for the assessment year 1963-64, though the assessee admittedly installed the machinery in question in 1961 and made no claim of development rebate nor did it create any reserve fund in the assessment year 1962-63, as required under the provisions of Section 34(3)(a) of the Act.

16. We, therefore, answer the question of lav referred in the negative and against the assessee.

17. The reference is answered accordingly.

Baharul Islam, J.

18. I agree.