

In the High Court of Punjab and Haryana, at Chandigarh

Income Tax Appeal No. 187 of 2014

Date of Decision: 28.7.2015

Commissioner of Income Tax (Central), Gurgaon

... Appellant(s)

Versus

Vee Gee Industrial Enterprises

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

Present: Mr. Rajesh Sethi, Advocate
for the appellant(s).

Dr. Rakesh Gupta, Mr. Kanisth Ganeriwala
and Ms. Kanika Ganeriwala, Advocates
for the respondent(s).

S.J. VAZIFDAR, A.C.J. (Oral)

1. This is an appeal against the order of the Income Tax Appellate Tribunal partly allowing the appeal filed by the respondent/assessee in respect of the assessment year 2005-06. The Tribunal deleted the addition of ₹ 31,10,000/- made by the Assessing Officer in the assessment year 2005-06.

2. The revenue contends that the following substantial questions of law arise for consideration:-

"i) Whether the findings have been recorded by ITAT on misreading and misinterpretation of facts and evidence emanating on record?

ii) Whether the ITAT did not commit grave error in arriving at such conclusions after adopting

erroneous criteria and by importing such facts and circumstances which are contrary to record?

iii) Whether, on the facts and in the circumstances of the case, the Ld. ITAT has erred in law in deleting the addition of ₹ 31.10 lacs on account of sale of scrap in A.Y. 2005-06 by holding it to be pertaining to assessment year 2007-08, when on the basis of seized documents exact year of taxation is identifiable?”

3. For the purpose of this appeal, we will assume as correct the finding of fact by the Assessing Officer and the Commissioner of Income Tax that the amount of ₹ 31,10,000/- pertained to the assessment year 2005-06 and not the assessment year 2007-08. On 16.1.2007, the search was conducted under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”). It is undisputed that the respondent/assessee surrendered the tax amounting to ₹ 84.20 lacs. It is also admitted that the amount was brought to tax by the department for the assessment year 2007-08. The only contention raised by the department is that the amount ought to be brought to tax for the assessment year 2005-06.

4. Even assuming that the department's contention is correct, it would make no difference in view of the judgments of the Hon'ble Supreme Court, the Bombay High Court and the Delhi High Court.

5. In ***Commissioner of Income-Tax, Delhi, Ajmer, Rajasthan and Madhya Bharat v. Nagri Mills Co. Ltd. (1958) ITR 681***, the

Bombay High Court held:-

“We have often wondered why the Income-tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the Income-Tax Act, raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the assessment year 1952-53 or in the assessment year corresponding to the accounting year 1952, that is in the assessment year 1953-54, should be a matter of no consequence to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other.”

6. This judgment was followed by the Delhi High Court in ***Commissioner of income-Tax and Another v. Dinesh Kumar Goel (2011) 333 ITR 10 (Delhi)***. The Delhi High Court, after quoting the above observations, observed as under:-

“26. Though our discussion on the issue is complete the parting comments need to be made. The receipts relate to the unexecuted packages, which are not shown in the instant year would be shown in the succeeding year. Rate of tax in respect of companies remains the same in all these years. Therefore, the Revenue does not lose anything, as it would receive the

tax on this income in the succeeding year. Still issues are raised and much outcry is made for nothing.”

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28. *In this Court, in its decision dt. 6th May, 2008 i IT Ref. No. 229 of 1988 entitled CIT vs. Vishnu Industrial Gases (P) Ltd. had quoted the aforesaid passage and thereafter remarked that the situation does not seem to have changed over the last fifty years and the Revenue continues to agitate the question whether tax is leviable in a particular year or in some other year. Alas! The aforesaid words of wisdom of Bombay High Court reminded to the Revenue authorities more than two years ago again have not made any dent on the psyche of the Revenue.”*

7. The matter, in any event, stands concluded by the judgment of the Hon'ble Supreme Court in **Commissioner of Income Tax v. Excel Industries Limited (2013) 358 ITR 295 (SC)**. The Hon'ble Supreme Court held:-

“32. *Thirdly, the real question concerning us is the year in which the assessee is required to pay tax. There is no dispute that in the subsequent accounting year, the assessee did make imports and did derive benefits under the advance licence and the duty entitlement pass book and paid tax thereon. Therefore, it is not as if the Revenue has been deprived of any tax. We are told that the rate of tax remained the same in the present assessment year as well as in the subsequent assessment year. Therefore, the dispute raised by the Revenue is entirely academic or at best may have a minor tax effect. There was, therefore, no need for the Revenue to continue with this litigation when it was quite clear that not only was it fruitless (on merits) but also that it may not have added anything much to the public coffers.”*

8. It was conceded that even in the present case, the rate of tax remained the same in both the assessment years i.e. 2005-06 and 2007-08. Following the above judgment of the Hon'ble Supreme Court, it must be held that the dispute raised by the revenue is essentially academic. The issue may have some tax effect in that if the department is correct and the amount ought to have been brought to tax two years earlier, there would be loss of interest for two years on the amount of ₹ 31,10,000/-. The department has not raised the claim in that regard. We do not wish to express any opinion as to the right of the department to claim interest.

9. In the circumstances, the questions of law, therefore, are decided in favour of the assessee. The appeal, is, therefore, dismissed.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

July 28, 2015
“DK”