207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

ITA-111-2003 (O&M)
Date of Decision: 06.08.2024

Oswal Woollen Mills Ltd. …Appellant

V/S

Commissioner of Income Tax (Central), Ludhiana …Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present Mr. B.M. Monga, Advocate and
Mr. Rohit Kaura, Advocate
for the appellant.

Mr. Ranvijay Singh, Sr. Standing Counsel for the respondent.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. This appeal was admitted on 09.02.2004, but no substantial question of law was framed by the Court.

2. Learned counsel for the appellant submits that the following substantial questions of law arise for consideration of this Court:-

> "3. Whether on the facts and circumstances of the case the claim of depreciation of assessee in respect of plant and machinery which were kept ready for use was sustainable in the light of decision given by learned Tribunal in earlier year as well as the view expressed by this Hon'ble Court rendered in the case of CIT vs. Pepsu Road Transport Corporation ?
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> 4. Whether on the facts and circumstances of the case the tribunal was right in setting aside the order of learned CIT (A) in respect of addition of Rs.4,53,442/- on account of revenue

expenditure incurred in the units where no manufacturing activity was done ?

3. Learned counsel submits that the substantial questions of law as noticed above are no more *res-integra* and stand finally adjudicated in terms of the decision of this Court in CIT vs. PEPSU Road Transport Corporation [2002] 121 Taxman 232 (Punjab & Haryana HC) and the same has been followed consistently by this Court in following cases:-

1. CIT (Central) Ludhiana vs. Nahar Exports Ltd. [2007] 163 Taxman 518 (Punjab and Haryana HC).
2. CIT vs. Oswal Agro Mills Ltd. [2011] 197 Taxman 25 (Delhi(.
3. National Thermal Power Corp. Ltd. vs. CIT [2012] 28 Taxman 89 (Delhi).
4. CIT-1, Chennai vs. Chennai Petroleum Corporation Ltd. [2013] 37 Taxman 332 (Madras).

4. Learned counsel appearing for the revenue submits that largely the questions have been decided in favour of the assessee but this Court may examine the facts of the present case as to whether the claim for depreciation would be allowed in favour of the assessee in respect of plant and machinery (units) which was never put to use during the year at all, as has been observed by the Assessing Officer since they were not put to use at all, it would be wrongful to grant depreciation benefit to the assessee.

5. In Nahar Exports Ltd. (supra), this Court by relying upon the CIT vs. Pepsu Road Transport Corporation (supra), made the following observations:-

"During the course of assessment proceedings, the Assessing Officer disallowed depreciation claimed by the assessee on investment made in the garment unit on the ground that the machinery so set up was not used. In appeal, the order passed by the Assessing Officer, disallowing the claim of depreciation, was upheld. However, in further appeal before the Tribunal, the claim made by the assessee was accepted relying upon the judgment of this Court in CIT v. Pepsu Road Transport Corpn [2002] 121 Taxman 232. While accepting the claim, the tribunal observed that the machinery was kept ready for use and was in fact actually used by the assessee during the last two years when the assessee had received orders from foreign customers for the supply of garments. The same could not be used during the year in question on account of non-receipt of orders.

4. Learned counsel for the revenue submitted that unless the machinery is actually used, no depreciation should be allowed. However, we find that similar contention was considered by this Court in Pepsu Road Transport Corpn. (supra) wherein it was held that even where the machinery is kept ready for use and could not be put to use, the assessee would be entitled to depreciation as everything ages with the passage of time and even if the machinery is kept ready for use, there is a normal depreciation of value. Accordingly, the question being covered by the judgment of this Court, we answer the same against the revenue and in favour of the assessee."

6. In view of above we find that the plant and machinery (unit) which were kept ready for use but could not be used, would not fall in different categories and the benefit of claim for depreciation would be available to the assessee.

7. Accordingly, the order passed by the CIT (Appeals) in respect of addition of Rs.4,53,442/- on account of revenue expenditure is upheld. The appeal is accordingly allowed.

8. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

06.08.2024
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1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No