

S.S. Crop Care Limited vs Commisioner Of Income Tax Judgement ... on 17 December, 2013

ITA NO.79/2013

17/12//2013

Shri A.P.Shrivastava, Advocate, with Shri Sapan Usrethe for
the appellant.

Shri Sanjay Lal, Advocate for the respondent on advance

notice.

They are heard on the question of admission.

This appeal under section 260-A of the Income Tax Act has been filed by the appellant, challenging the orders passed by the Appellate Authority of the Income Tax Appellate Tribunal as contained in Annexure A-1 dated 11-02-2013, wherein a sum of Rs.19,42,390/- said to have been incurred for payment of wages etc. to the casual employees/labours has been disallowed and has been added to the income of the appellant. It is said that the expenditure on this count has been disallowed without appreciating the provisions of Section 37 of the Income Tax Act.

The appellant is a registered Private Limited Company registered under the provisions of Companies Act and is engaged in the business of manufacture of pesticide on job work basis for M/s Bayer Crop Science Limited. For the assessment year 2007-2008, the appellant filed return of income on 29-08-2007 and declared a total income of Rs.16,86,270/-. Assessment proceedings were held and it is seen that the Assessing Officer examined the wages, register and other bills and vouchers with regard to labour engaged on casual basis and with regard to expenditure of Rs.50,84,778/- towards payment for casual labour, proper bills and vouchers having not been maintained. Expenditure to the tune of Rs.3,50,000/- was disallowed by the Assessing Officer, as is evident from para-4 of the order passed by the Assessing Officer i.e. Annexure A-3 dated 24-12-2009.

Aggrieved by this act of disallowance, appeal was filed before the Commissioner of Income Tax (Appeal) Bhopal. After hearing all concerned and after verifying the details of labour and wages payment, the Commissioner of Income Tax (Appeal) found that the addition should have been made on the higher side and therefore, issued a show cause notice to the appellant asking them to show cause as to why this expenditure of Rs.3,50,000/- be not enhanced to Rs.50,84,778/-. After considering various aspect of the matter an addition of Rs.38,84,778/- was made on this count. On the appeal being filed before the Income Tax Appellate Tribunal, the Appellate Tribunal found that the enhancement was made to the tune of Rs.38,84,778/- on presumption and the Tribunal by the impugned order dated 11-02-2013 reduced the same by 50% and restricted the addition to Rs.19,42,358/-.

Challenging this addition of Rs.19,24,358/- this appeal has been filed and the only ground canvassed is whether the expenditure on this count was allowable and has the same has been properly examined in the light of the provisions of section 37 of the Income Tax Act. The appeal filed is with regard to question as framed in the memorandum of appeal pertaining to not appreciation of provisions of section 37 of the Income Tax Act.

Shri A.P.Shrivastava, learned counsel for the appellant took us to the provision of section 37 of the Income Tax Act and tried to emphasize that the addition made by the Tribunal is without considering the provisions of section 37 and therefore, the appeal be admitted, Learned counsel for the revenue tried to emphasize that the matter has been considered by all the authorities, therefore, no interference be made. It is said that the question of addition is a mixed question of law and facts and as no specific objection with reference of section 37 was canvassed before all the three authorities, at this stage this question cannot be considered.

We have heard the learned counsel for the parties and perused the record. From perusal of the orders passed by the Commissioner of Income Tax (Appeals) Annexure A-2 and the Tribunal, it is clear that the addition with regard to labour expenses for employing casual workers and labours has been ordered mainly because proper account, register of wages, bills and vouchers have not been produced. It is found that the appellant is a company registered under the Companies Act and its accounts of books, bills and vouchers are audited under section 44 AB of the Companies Act but no audit account showing expenditure incurred for engaging casual labours or labours is produced. That apart there is nothing to show payment of employees provident fund or the employees state Insurance Contribution with regard to these employees, it is based on these consideration that the amount has been added. The concurrent findings recorded by the authorities thus show that the proper books of accounts with regard to expenditure on this count was never produced or established and huge amount of Rs.50,84,778/- was sought having been incurred with regard to labour payment. As this amount was not properly explained by documentary supporting evidence, the action has been taken.

As far as applicability of section 37 is concerned, section 37 cannot be read in isolation, the applicability of section 37 is to be taken note of with reference to various other sections like section 40 and certain other provisions in the Act with regard to exemptions and deductions etc. as are contemplated in various provisions of Income Tax Act. The question of allowing this deduction with reference to section 37 or any other provision of Income Tax is mixed question of law and fact and cannot be raised for the first time in these proceedings. From the orders passed by the Assessing Authority, Commissioner of Income Tax (Appeal and the the Appellate Tribunal and the Tribunal it is seen that no such specific assertion has been made seeking exemption with reference to section 37. On the contrary after the order was passed by the Appellate Tribunal on 11-02-13. a miscellaneous application was filed which has been decided vide Annexure A-4 on 26-07-2013. This was an application under section 254(2) of the Income Tax Act and in this application also, it was never said that the deduction of the expenditure incurred with regard reference to section 37 has not been considered. That being so we see no reason to interfere into the matter. That apart the question of granting exemption from addition of this expenditure under section 37 will arise only if the expenditure is shown to have been incurred or proved on account of payment for casual labour etc.

On the contrary, the finding recorded by the Appellate Tribunal in para-3 goes to show that with regard to this item, as is contained at serial no.5 of table no.2 of the order passed by the Assessing Authority, no proper books of account and vouchers etc. has been produced and taking note of all these factors, it is held that the expenditure is not proved to have been incurred and therefore, it is disallowed. If that be the position without proof of expenditure being established, the benefit of section 37 cannot be granted.

Taking note of all these circumstances, we find no ground to interfere into the matter as no substantial question of law as alleged arise for consideration.

Accordingly, the appeal is dismissed at this stage itself.

(RAJENDRA MENON)
JUDGE

(A.K.SHARMA)
JUDGE

hsp/-