

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

BEFORE Dr. O.K.NARAYANAN, VICE-PRESIDENT
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA Nos.2284 & 2285(Mds)/2012
Assessment Years : 2004-05 & 2007-08

The Assistant Commissioner
of Income-tax,
Central Circle I(4),
Chennai.

(Appellant)

M/s.Jakhau Salt Co. Pvt.Ltd.
Vs. TVH Phase II, 5th Floor,
Bellicia Towers, MRC Ngr.,
Chennai-600 028.
PAN AAACW0867G.

(Respondent)

Appellant by : Shri Shaji P Jacob, IRS, Addl.CIT
Respondent by : Shri K.M.Mohandass, FCA

Date of Hearing : 18th June, 2013
Date of Pronouncement : 19th June, 2013

ORDER

PER Dr.O.K.NARAYANAN, VICE PRESIDENT

These appeals are filed by the Revenue. The relevant assessment years are 2004-05 and 2007-08. The appeals are directed against the orders of the Commissioner of Income-tax(Appeals)-I at Chennai, both dated 4-9-2012. The appeal for the assessment year 2004-05 arises out of the order passed

under section 143(3), read with section 263 of the Income-tax Act, 1961. The appeal for the assessment year 2007-08 arises out of the regular assessment completed under section 143(3) of the Act.

2. First we will consider the appeal filed for the assessment year 2004-05.

3. The only ground raised by the Revenue in the present appeal is that the Commissioner of Income-tax(Appeals) has erred in allowing depreciation at ₹ 1,26,98,253/- on stone bunds by holding that stone bunds are not an identifiable asset by itself eligible for depreciation at a different rate than the rate applicable to salt pans. It is the case of the Revenue that the Commissioner of Income-tax(Appeals) has failed to note that as per depreciation table under Rule 5 of the Income-tax Rules, 1962, the depreciation for salt works is to be allowed at 100% only in the cases of salt pans, reservoirs and condensers, etc. made of earthy, sandy or clayey material or any other similar material but not for stone bunds which is quite distinct from salt pans, reservoirs, etc. It is the case of the Revenue that stone

bunds have longer life and enduring capacity and therefore depreciation is allowable only at 10%.

4. The assessee is carrying on the business of manufacturing and trading in industrial and edible salt. In the course of the assessment proceedings, the Assessing Officer examined the details and particulars of the expenditure incurred by the assessee for the construction of salt pans. The Assessing Officer estimated that an amount of ₹ 1,41,09,170/- was incurred for constructing stone bunds. He held that stone bund is an asset different from salt pans and its accessories and, therefore, stone bund is not entitled for depreciation at 100% as in the case of salt pans. He held that stone bunds fall under the category of general plant and machinery. Accordingly, he allowed depreciation at 10% and disallowed the balance 90% out of the claim of 100% depreciation made by the assessee. In first appeal, the Commissioner of Income-tax(Appeals) found that stone bunds are laid for demarcating the salt fields covering huge extent of area. This is mainly done for stone contouring smaller pans spread over the salt field for easy cultivation of salt. He also found that stone bunds are made up of stones and clay

and they form an integral part of salt pans, which protect the salt pans from erosion through tidal or by storm water. He has also made a finding that production of salt from salt pans is not possible without stone bunds. Accordingly, he held that stone bunds are part and parcel of the salt pans and they cannot by themselves be an identifiable independent asset to claim depreciation at a different rate than the rate applicable to salt pans. In order to keep the water at the required level for the purpose of producing salt, salt pan contoured by a stone bund is very much essential. Therefore, he held that the stone bunds should be taken as part and parcel of salt pans and depreciation should be allowed at 100% as applicable to salt pans. He accordingly directed the Assessing Officer to grant depreciation at 100%.

5. After considering the issue in detail, we find that the conclusion arrived at by the Commissioner of Income-tax(Appeals) is based on the relevant facts of the case and his finding on this point is justified in law.

6. It is not necessary to repeat that the stone bunds are very much essential for operating salt pans in a large extent

of area, that too abutting sea water. Without the contouring done by means of stone bunds, it is not possible even to retain sea water in the salt pans and dry up the salt. Salt pans are operated in a large extent of area, whereby internal contouring is a must. Sea water is filled in and dried up in different small pockets of land consisting in a large extent of land area. Stone bunds are very necessary to protect salt pans from the tidal waves and from storm water. Therefore, it is to be seen that stone bunds are part and parcel of salt pans themselves. Therefore, there is no justification in treating the stone bunds different from the salt pans as a whole. Salt pans and stone bunds cannot be viewed differently. Stone bounding is also like earth work, Morrum spreading, clay work, etc. Therefore, we find that depreciation should be allowed at the rate of 100% as a whole on the salt pans including the expenses incurred for stone bounding.

7. Accordingly we find that this appeal filed by the Revenue is liable to be dismissed.

8. Next we will consider the appeal filed by the Revenue for the assessment year 2007-08.

9. The only ground raised by the Revenue in the present appeal is that the Commissioner of Income-tax(Appeals) has erred in deleting the addition made under section 2(22)(e) of the Act towards the loan received from M/s.Goodearth Maritime Ltd. at ₹ 81 lakhs and from M/s.Archean Granites Pvt. Ltd. at ₹1,02,00,000/-. It is the case of the Revenue that the provisions of section 2(22)(e) have been rightly invoked by the Assessing Officer especially in the light of the fact that the money received by the assessee from these companies are shown in the balance sheet as “unsecured loans”.

10. As far as the loan received from M/s.Archean Granites Pvt. Ltd. is concerned, the assessee is not a shareholder of that company. The Special Bench of the Income-tax Appellate Tribunal, Mumbai Bench-E, has held in the case of ACIT vs. Bhaumik Colour (P) Ltd., 118 ITD 1 (Mum.)(SB), that the expression ‘shareholder’ referred to in section 2(22)(e) refers to both a registered shareholder and beneficial shareholder and if a person is a registered shareholder but not beneficial shareholder, then the provisions of section 2(22)(e) would not apply and similarly if a person is a beneficial shareholder but not

a registered shareholder then also the provisions of section 2(22)(e) would not apply. In the present case, the assessee is not a shareholder at all. Therefore, obviously, the provisions of section 2(22)(e) does not apply to the assessee. Therefore, we have to hold that the order of the Commissioner of Income-tax(Appeals) on this point is in accordance with law. All other findings and reasonings given by the Commissioner of Income-tax(Appeals) in the light of the different arguments advanced by the assessee are not adjudicated here because all those arguments, contentions and findings are academic, as the issue is straightaway covered by the decision of the Mumbai Special Bench of the Tribunal mentioned above. As the assessee is not a shareholder, that itself exonerates the assessee from section 2(22)(e) of the Act and, therefore, nothing further is to be considered. Therefore, on this ground alone, it is not possible to treat the amount of loan received from M/s.Archean Granites Pvt. Ltd. as dividend under section 2(22)(e) of the Act. This ground raised by the Revenue fails.

11. Regarding the account with M/s.Goodearth Maritime Ltd., we agree with the finding of the Commissioner of Income-

tax(Appeals) that it is a running account maintained by the assessee. The nomenclature given to a particular outstanding balance in the account statement of the assessee is not a conclusive proof to establish the real character of that amount. The fact that the amount payable to M/s.Goodearth Maritime Ltd. was shown by the assessee in the balance sheet as “unsecured loan” does not mean that the outstanding balance was the result of loan availed from the said company. It is the pith and substance that should be examined, rather than the form.

12. The assessee-company is having regular business transactions with M/s.Goodearth Maritime Ltd. The assessee is regularly making payments to M/s.Goodearth Maritime Ltd. towards hire charges for export of salt, etc. All the transactions made by the assessee-company with M/s.Goodearth Maritime Ltd. are transactions carried out in the ordinary course of business. All the payments made by the assessee-company to M/s.Goodearth Maritime Ltd. were payments made for services received. The balance outstanding payable to M/s.Goodearth Maritime Ltd. again related to charges payable by the assessee-company for services received from M/s.Goodearth Maritime Ltd.

Running current account reflecting the business transactions cannot be treated as a case of advancing loans within the meaning of section 2(22)(e) of the Act. The Hon'ble Madras High Court in the case of CIT vs. L.Alagusundaram Chettiar, 109 ITR 508, has held that payment to a person by way of hire charges or wages, etc., to which the payee was entitled to, cannot be brought under the mischief of section 2(22)(e) of the Act. The Hon'ble Bombay High Court in the case of CIT vs. Nagindas M Kapadia, 177 ITR 393, has held that running account maintained by the parties against regular business transactions cannot be treated as an item coming under section 2(22)(e) of the Act. This is because all such payments do not fall within the meaning of loan. In the present case, as it is a regular and business running account, we find that the Commissioner of Income-tax(Appeals) is justified in holding that the assessing authority is not justified in invoking section 2(22)(e) of the Act.

13. Accordingly, the appeal filed by the Revenue for the assessment year 2007-08 is liable to be dismissed.

14. In result, both the appeals filed by the Revenue for the assessment years 2004-05 and 2007-08 are dismissed.

Order pronounced on Wednesday, the 19th of June, 2013
at Chennai.

Sd/-
(Vikas Awasthy)
Judicial Member

Sd/-
(Dr. O.K.Narayanan)
Vice-President

Chennai,
Dated, the 19th June, 2013.
V.A.P.

Copy to: 1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. GF.