

(2004) 01 CAL CK 0013
In the Calcutta High Court

Case No : Income Tax Reference No. 129 of 1994 15 January 2004 & Income-tax Reference No. 129 of 1994

Assam Brook Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 15-01-2004

Acts Referred:

Income Tax Act, 1961 — Section 32AB, 32AB(1), 32AB(2), 32AB(3), 32AB(5)

Citation : (2004) 189 CTR 347

Hon'ble Judges : Sadhan Kumar Gupta, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : R.N. Bajoria and J.P. Khaitan, for the Appellant; D.R. Som and Soumitra Pal, for the Respondent

Judgement

Sadhan Kumar Gupta , J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, wherein two questions were referred to this court by the Income Tax Appellate Tribunal. The facts of the case are that the assessee filed its return in respect of the assessment year 1989-90. The assessee is a limited company and the method of accounting is the mercantile system. The assessment, by the authority concerned, was made u/s 143(3) of the Income Tax Act, 1961. The Assessing Officer did not entertain the claim of the assessee in respect of certain items amongst which the disallowance of deduction claimed u/s 32AB of the Income Tax Act, 1961, and the disallowance of Rs. 5,93,126 u/s 37(2A) of the Income Tax Act, 1961, are relevant so far as the present hearing is concerned. Being aggrieved by the decision of the Assessing Officer in respect of those two items, the assessee preferred appeal before the Commissioner of Income Tax (Appeals) and thereafter the matter finally came before the learned Income Tax Appellate Tribunal for decision. The learned Tribunal allowed Rs. 78,135 in favour of the assessee-company treating it as expenditure for business purposes. However, the claim in respect of the expenditure of Rs. 5,00,000 on this head was not allowed by the Tribunal. As such, being asked by the assessee the learned Tribunal referred the question before this court which is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in rejecting the claim of subscription paid to Borsola Gymkhana Club for repairs of club building, which was destroyed by fire, of Rs. 5,00,000 on the ground that the assessee was not the owner of the club building, although its employees are members of this club ?"

2. Another question was referred by the Tribunal on the facts that the Assessing Officer while making the assessment took the view that the assessee acquired certain new plant and machinery or deposited certain funds in the investment deposit account and he did not allow the deduction in favour of the assessee as per the provisions of Section 32AB(3) of the Income Tax Act. The matter was heard in appeal by the Commissioner of Income Tax (Appeals) and he accepted the argument of the assessee-company and directed the Assessing Officer to make out the deduction claimed u/s 32AB holding that deduction under the above mentioned provision is allowable to the assessee-company. Being aggrieved and dissatisfied with the said order, the assessee-company preferred an appeal challenging the procedure to be adopted as per the direction of the Commissioner of Income Tax (Appeals). The learned Tribunal, after hearing the parties, allowed the appeal of the assessee-company by setting aside the order of the Commissioner of Income Tax (Appeals) and directed the Assessing Officer to compute 20 per cent, of the eligible profit inclusive of rental income, interest, dividend, profit on sale of assets, replantation subsidy along with other income as found in the Sixth Schedule, Parts II and III of the Companies Act subject to such adjustment as found prescribed therein. As the Revenue was dissatisfied with the said finding of the Tribunal, the following question was referred to this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law as well as on facts to direct the Assessing Officer to compute 20 per cent, of the eligible profit inclusive of rental income, interest, dividend, profit on sale of assets, replantation subsidy along with other income as found in profit and loss account against the correct interpretation of Section 32AB ?"

3. On the basis of those two questions, the present hearing took place and we heard the submissions made at length by the learned advocates for both the sides. Let us now answer those two questions one after another. So far as the first question is concerned, it appears that the assessee claimed deduction to the extent of Rs. 5,93,126 on account of expenditure pertaining to various clubs. While the learned Tribunal allowed the subscription fees of the clubs as paid by the assessee-company, still the Tribunal rejected the prayer of deduction in respect of the subscription of Rs. 5,00,000 which was paid by the assessee-company to the concerned club for repairs, renovation and extension of the club building, on the ground that such repair could not be allowed as the club building was not owned by the assessee-company. The learned advocate for the assessee-company argued that the learned Tribunal was not at all justified in rejecting this prayer for deduction of Rs. 5,00,000. It appears that as per the provisions of

Section 37 of the Income Tax Act in respect of such an expenditure this type of deduction is allowable. It appears from the facts, which have been considered by the Assessing Officer, the Commissioner of Income Tax (Appeals) as well as the learned Tribunal, that the assessee-company claimed that the payments were made in favour of the club for paying subscription of the assessee's employees who are members of the club and also in respect of the renovation and repairing of the said club building which had been damaged. In this respect, the learned advocate for the assessee cited various decisions in order to prove that those payments should be considered as business expenditure as per the provisions of the Income Tax Act and necessary deduction should be allowed. In the case reported in Commissioner of Income Tax Vs. Sundaram Industries Ltd., , the hon"ble Madras High Court was of the opinion that the expenditure so incurred in favour of the club, if it is incurred to promote and foster the business interest of the assessee-com-pany, then the said expenditure should be treated to be a business expenditure- The hon"ble Supreme Court in the decision reported in Commissioner of Income Tax, Tamil Nadu II, Madras Vs. Madras Auto Service (P) Ltd., also expressed the same opinion. The decision as cited in Commissioner of Income Tax Vs. M/s. Engineers India Ltd., also expressed the view to the effect (headnote): "Hence, the Tribunal was right in holding that the expenditure incurred by the assessee on account of initial membership fee paid to the said organisation could not to be said to be capital expenditure." In the case reported in Gujarat State Export Corporation Ltd. Vs. Commissioner of Income Tax, , the hon"ble Gujarat High Court has discussed the relevant provisions in detail and thereafter was pleased to hold such expenditure to be business expenditure of the assessee. In this decision it has been stated therein (at page 653) : "For deciding the question as to whether the expenditure is of capital nature or revenue nature, one of the relevant criteria is whether it is for acquisition of a concern or assets or whether the expenditure is for carrying on a concern or for running the business. If the aim and object of the expenditure is for carrying on the concern, then it is a revenue expenditure. Hence, in our view, it would be difficult for us to accept the contention of the Revenue that the entrance fee paid by the assessee for getting the membership of the sports club can be termed as capital expenditure". As such, from the decisions quoted above it is clear that if it is for running the business or working it with a view to produce profits, then it is a revenue expenditure. The learned advocate for the assessee cited an unreported decision passed by this High Court in Income Tax Reference No. 33 of 1993 wherein their Lordships clearly decided that a payment as made by the assessee to the Chamber of Commerce should be held to be a business expenditure and accordingly therein that case the question was decided in favour of the assessee.

4. So far as the present case is concerned, it appears that the learned Tribunal while allowing deduction in respect of subscription paid to the dubs, disallowed the amount of Rs. 5,00,000 which was paid by the company on account of renovation/repair of the said club on the ground that the company was not the

owner of the said club. That there was a payment in that respect, there is no dispute before us. The Tribunal is the final fact-finding authority and unless its decision is challenged on the ground of perversity, there is no reason to disbelieve the said fact. In this respect we rely on the decision reported in Commissioner of Income Tax, Poona Vs. Manna Ramji and Co., ; Aluminium Corporation of India Ltd. Vs. Commissioner of Income Tax, West Bengal, . From those decisions it will appear clearly that the fact as stated by the Tribunal at the time of the reference, unless it is challenged on the ground of perversity, should be accepted to be true. So the fact remains that there was a subscription to the extent of Rs. 5,00,000 by the company for the renovation/repair of the club in question. It has been claimed that the employees of the company are the members of the club and as the company is situated in a remote place, that is the only source of recreation of its employees. Naturally, if the management pays some amount for the upliftment/running of the club in question in an effective way then it must be held that the said payment was made in the interest of the company so that its employees remained happy and consequently the work of the company is not hampered in any way due to dissatisfaction on the part of its employees. As this payment of Rs. 5,00,000 was made by the company to the club keeping its business interest in mind, so in view of the decisions stated above, the said payment must be held to be business expenditure and accordingly as per Section 37 of the Income Tax Act the assessee-company is entitled to get deduction. The reason for rejecting such prayer by the Tribunal was that the assessee-company was not the owner of the said club. In effect, this argument of the learned Tribunal practically makes the case of the assessee-company stronger. By making such payment to a club there is no personal benefit of the company and as such, the absence of ownership more supports the contention of the assessee. So, from our above discussion we are of the opinion that the learned Tribunal was not justified in disallowing this payment of Rs. 5,00,000 and we are of the opinion that the assessee-company is entitled to get this deduction on account of business expenditure. Accordingly, we answer the question in the negative and it goes in favour of the assessee and against the Revenue.

5. So far as the next question is concerned, it appears that the said question came at the instance of the Department and the main thing that is to be considered, is, whether in the computation of the profits for allowing deduction u/s 32AB income by way of dividends, plantation subsidy, profit on sale of assets, rental income, etc., are to be included or not. This question, was raised by the Revenue. Mr. Som, the learned advocate for the Revenue, argued that the learned Tribunal was not justified in allowing the deduction in favour of the assessee-company u/s 32AB of the Act. In support of his contention he cited the decisions reported in CIT v. Dinjoye Tea Estate (P.) Ltd. [1997] 224 ITR 263 (Gau) and Commissioner of Income Tax Vs. Warren Tea Ltd., . In those two decisions it has been held that as the assessee is the owner of the tea gardens and derives income of selling tea leaves the investment in shares is not a

business of the assessee and as such, such investment cannot be held to be the business of the assessee and so deduction on that account is not permissible. He has also cited the decision reported in Apollo Tyres Ltd. Vs. Commissioner of Income Tax, Kochi, . If we look into this decision then it will appear that the hon"ble Supreme Court was pleased to hold (at page 282) : "Therefore, in our opinion, the dividend income earned by the assessee-company from its investment in the U, T. I. should be included in computing the profits of eligible business u/s 32AB of the Act". As such, it appears that this decision practically supports the contention of the assessee-company. In view of this decision of the hon"ble Supreme Court, we do not prefer to consider the decision as cited in Commissioner of Income Tax Vs. Warren Tea Ltd., and CIT v. Dinjoye Tea Estate (P.) Ltd. [1997] 224 ITR 263 (Gau) . On the other hand, the learned advocate for the assessee-company cited a decision reported in Commissioner of Income Tax Vs. Tamil Nadu Mercantile Bank Ltd., , wherein it has been decided that the computation of income is to be made under subsection (3) of Section 32AB, i.e., under the Companies Act. In the decision reported in Commissioner of Income Tax, Andhra Pradesh Vs. Cocanada Radhaswami Bank Ltd., , the hon"ble Supreme Court has held at page 310 : "Though for the purpose of computation of the income, interest on securities is separately classified, income by way of interest from securities does not cease to be part of the income from business if the securities are part of the trading assets." In the decisions reported in O. Rm. M. Sp. Sv. Firm Vs. The Commissioner of Income Tax-Madras, and Commissioner of Income Tax Vs. Nawn Estate Private Ltd., , it has been held that the rental income of the assessee-company can also be taken into consideration for the purpose of deduction as claimed u/s 32AB of the Income Tax Act.

6. On the basis of those decisions we are to consider as to whether the assessee-company is entitled to deduction for the expenditure which he has made for the purchase of new plant and machinery in connection with its business. So far as the expenditure on this account, as claimed by the assessee-company in its return is concerned, there is no dispute in this respect. Section 32AB provides investment deposit account and the manner in which the assessee is entitled to deduction for the investment so made as per this provision. Section 32AB, Sub-section (1)(ii), provides for deduction of a sum equal to 20 per cent, of the profits of eligible business or profession as computed in the accounts of the assessee audited in accordance with Sub-section (5). In Sub-section (2), the definition of "eligible business or profession" has been defined. If we look into Section 32AB, Sub-section (2)(iii) of the Act then it will appear that it has been provided therein that the provisions have been made for deduction in favour of a company in case of installation of new plant or machinery. Subsection (3) of Section 32AB clearly provides that the calculation of the net income of the assessee-company is to be made as per the provisions of the Companies Act. So far as the present case is concerned, the Tribunal, being the final fact-finding authority accepted the claim of the company that the assessee acquired certain new plant and machinery and made investment in deposit accounts and the auditor's report was also placed

before the said Tribunal. The auditors issued certificate and thereafter recommended 20 per cent, deduction which amounted to Rs. 8,80,587, The Tribunal has clearly stated in its judgment that the purchase of plant and machinery worth Rs. 12,44,993 was not disputed. It is also not disputed before the said Tribunal that the assessee was entitled to deduction u/s 32AB of the Income Tax Act. The decisions as relied by the assessee-company and as cited before hand clearly show that the Supreme Court and other courts held that although income of the business arising from different sources may be classified under different heads of income, but by that break up, the income does not cease to remain income of the business. The ratio as decided by these decisions is that whatever income has been earned by an assessee either from its activities of manufacture or production for sale or from its activities as long as they constituted the same business, or will fall under the category of eligible business within the meaning of Section 32AB(2)(i) and consequently the assessee will be entitled for deduction to the extent of 20 per cent, in respect of such income as provided u/s 32AB(1)(ii) of the Income Tax Act. So far as the present case is concerned, it appears that the learned Tribunal discussed the business activities of the assessee-company and thereafter the said Tribunal directed the Assessing Officer to compute 20 per cent, of the eligible profit and allow deduction in favour of the assessee-company. In view of the facts and circumstances stated above and the decisions of the hon"ble apex court and other courts, we are of the opinion that the order as passed by the learned Tribunal is perfectly justified and we do not see any reason whatsoever to interfere with the said finding of the learned Tribunal. As such, the question is answered in the affirmative and decided in favour of the assessee and against the Revenue.

7. The reference is thus disposed of. Xerox certified copy, if applied for, may be handed over to the parties.

Aloke Chakrabarti, J.

8. I agree.