(1998) 07 MAD CK 0052

In the Madras High Court

Case No : Tax Case No''s. 787 and 788 of 1987 (Reference No''s. 490 and 491 of 1987)

Beardsell Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Income Tax Act, 1961 — Section 35B, 37, 40
Income Tax Rules, 1962 — Rule 6D

Citation : (2000) 246 ITR 505

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : M. Utham Reddy, for the Appellant; C.V. Rajan, for the Respondent

Judgement

R. Jayasimha Babu, J.—The following three questions have been referred to us, at the instance of the assessee. They arise out of the order

of the Tribunal and relate to the assessment year 1980-81 :

(1) In the facts and circumstances of the case was the Income Tax Appellate Tribunal right in not allowing weighted deduction u/s 35-B of the

Income Tax Act, 1961, on the total expenditure of the export division which was operated as a completely separate department and for which

there were separate accounts ?

(2) In the facts and circumstances of the case was the Income Tax Appellate Tribunal right in holding that the limits of daily allowance specified in

Rule 6D is not restricted to the time spent on actual travelling ?

(3) In the facts and circumstances of the case, was the Income Tax Appellate Tribunal, right in holding that medical reimbursement should be taken

into consideration as salary, while computing the disallowance to be made u/s

40(c)/40A(5) of the Income Tax Act ?

2. Counsel submitted that similar questions had been referred to this court in respect of two earlier assessment years 1978-79 and 1979-80 though

counsel is unable to furnish the numbers of those tax cases. Those references are now not before us, but the fact is that they are pending. Counsel

also submitted that those two cases will come in the normal course for final disposal and the answer to be recorded on similar questions raised in

this case will apply to those cases as well.

3. The first question is regarding the disallowance of 25 per cent. of the claim for deduction u/s 35B of the Income Tax Act. Counsel contended

that the assessee maintains an export division separately and the accounts of that division are separate and, therefore, there is no need to adopt any

thumb rule for disallowing the part of the claim. The record before us, however, does not support the assertion. There is no finding by the Tribunal

or any other authority that the assessee maintains a separate export division or maintains separate accounts or employs persons exclusively for the

export division or that all the expenditures is incurred in relation to that division only for the purpose of export promotion. The Tribunal has rejected

the claim for allowing a deduction for 100 per cent. and limited it to 75 per cent. In the absence of any supportive facts we find no reason to

interfere with the finding of the Tribunal.

4. The second question referred to us at the instance of the assessee is regarding the interpretation of the Rule 6D of the Income Tax Rules, 1962.

That rule reads as under :

6D, Expenditure in connection with travelling, etc.--(1)(i) The allowance in respect of expenditure incurred by an assessee in connection with

travelling by an employee or any other person outside India for the purposes of the business or profession of the assessee shall not exceed the

amount which bears to the aggregate of the amount, if any, covered by foreign exchange granted, or permitted to be acquired, for the purpose of

such travel under the law relating to foreign exchange for the time being in force and the amount expended on such travel in Indian currency, the

same proportion as is determined in the manner specified in Clause (ii) ;

(ii) The proportion referred to in Clause (i) shall be determined by dividing the number of days mainly devoted by such employee or other person for the purposes of the business or profession of the assessee outside India by the total number of days spent by such employee or other person

outside India (excluding, in either case, the number of days required for such travel by a reasonably direct route in the mode of travel adopted by

him).

Explanation.--For the purpose of this rule, the expression ''days mainly devoted by such employee or other person for the purposes of the business

or profession of the assessee outside India'' shall include any public holiday in a foreign country on which such employee or other person is

required to stay outside India, provided that the working days immediately following such public holiday is mainly devoted by him for the purposes

of the business or profession of the assessee.

(2) The allowance in respect of expenditure incurred by an assessee in connection with travelling by an employee or any other person within India

outside the headquarters of such employee or other person for the purposes of the business or profession of the assessee shall not exceed the

aggregate of the amounts computed as hereunder :

(a) in respect of travel by rail, road, waterway or air, the expenditure actually incurred ;

(b) in respect of any other expenditure (including hotel expenses or allowances paid) in connection with such travel, an amount calculated at the

following rates for the period spent outside such headquarters :

(i) where the amount of such expenditure does not exceed Rs. 1,500 per day, the whole of such amount ;

(ii) in any other case, Rs. 1,500 as increased by a sum equal to seventy-five per cent. of such expenditure in excess of Rs. 1,500 per day.

5. It is the case of the assessee that the limit specified therein is restricted to the amount actually spent on travelling"" and would not include the stay

of the person who had travelled at the destination or en route, and that the limits specified in Rule 6D of the Rules would not apply to the

expenditure incurred during the period of stay. We do not find it possible to accept the submission. Section 37(3) of the Act itself provides that

expenditure incurred on travelling by an employee or any other person (including hotel expenses or allowances paid) in connection with such travel,

shall be allowed only to the extent"", prescribed. Rule 6D itself in the later part refers to hotel expenses and allowances paid in connection with the

travelling.

6. The word ""travelling"" is no doubt capable of being construed in a narrow way as to limit it to the actual time spent on travel, i.e., the time actually

spent on road, rail or air while travelling from one destination to another. In the Income Tax Rules, 1962, Rule 6D and in Section 37, however, that

term has been used in a wider sense to include the entire period of absence from the headquarters including the period from the time of the

departure till the time of the return, and including the time spent on actual travel and the time spent staying in hotels or elsewhere during the period

when the person was not actually travelling, but remained outside the headquarters and had incurred expenditure on such a stay. Though it may

well be that the Legislature could have used two different terms such as travel and stay, the fact that it has chosen to use the single term ""travelling

to include the entire period of absence from the headquarters does not by itself warrant giving a narrow interpretation to the word ""travelling"" in

Section 37(1) and Rule 6D, having regard to the fact that in both these provisions, hotel expenses have been expressly referred to. It is not

possible to conceive of a person staying in a hotel and also actually travelling at the same time, even though the comforts available by various

modes of travel have now improved to such an extent that they can almost be equated to the comforts available in a luxury hotel. That however,

does not lead to the conclusion that a person is deemed to be staying in a hotel even while he is travelling or that he is deemed to be travelling even

he is in hotel, using the Word travel in narrow sense. That word has been used in a wider sense in the statutory provisions. As noticed already

travelling for the purpose of these provisions includes the entire period of absence after the travel commences. It includes the periods spent on

actual travel as also the period''s spent while staying away from the headquarters before completing the route which brings the person back to the

place that he started from. Our answer to the second question raised at the instance of the assessee also has to be against the assessee and in

favour of the Revenue.

7. As regards the third question it is also answered against the assessee. in view of the decision of the Supreme Court in the case of Commissioner

of Income Tax, Bombay, etc. Vs. M/s. Mafatlal Gangabhai and Co. (P) Ltd., , wherein the Supremo Court held [he payment of cash allowances,

even if it be as reimbursement of expenditure incurred by the assessee such as medical expenditure is not to be treated as perquisite but it should

be treated as part of salary to which Section 40(c) of the Act would be applicable. That is what the Tribunal has held and we see no error in that

finding.

8. The answer to all the three questions referred to us are in favour of the Revenue and against the assessee. The Revenue shall be entitled to costs

of Rs. 750.