
(1998) 07 MAD CK 0134

In the Madras High Court

Case No : Tax Case No"s. 787 and 788 of 1987

BEARDSELL LTD.

APPELLANT

Vs

COMWSSIONER OF INCOME TAX

RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Citation : (1998) 150 CTR 620

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

Bench : Full Bench

Judgement

R. JA YASIMHA BAB U, J.

The following three questions have been referred to us, at the instance of the assessee, they arose out of the or~ -,r of the Tribunal and relate to the asst. yr. 1980-81:

(1) In the facts and circumstances of the case, was the Tribunal right in not allowing weighted deduction under s. 35B of the IT Act 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 Tribunal right in holding that the limits of daily allowance specified in r. 61) is not restricted to the time spent on actual travelling?

(3) In the facts and circumstances of the case, was the Tribunal, right in holding that medical reimbursement should be taken into consideration as salary, while computing the disallowance to be made under s. 40(c)/40A(5) of the IT Act, 196P

2. Counsel submitted that similar questions had been referred to this Court in respect of two earlier asst. yrs. 1978-79 and 1979-80, though counsel is unable to furnish the numbers of those references are not now 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 under s. 35B of the IT Act. Counsel contended that the assessee maintains export division separately and the accounts of that division are separate and, therefore, there is no need to adopt any thumb rule of 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 separate export division or maintain separate accounts or employs persons exclusively for the export division or that all the expenditure 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 r. 61) of the IT Rule. That rule reads as under:

"6D. (1)(i) Expenditure in connection Mth travelling, etc.-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 i.-. force and the amount expended on such travel in Indian currency, the same proposition as is determined in the manner specified in cl. (ii).

(ii) The proposition referred to in cl. (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 purpose of the business or profession of the assessee outside India" shall included any public holiday in a foreign country on which such employee or other person is required to stay outside India, provided that the worldrig 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 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."

It is the case of the assessee that the limits 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 enroute, and that the limits specified in r. 61) of the rule would not apply to the expenditure incurred during the period of stay. We do not find it possible to accept the submission. Sec. 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 latter part refers to hotel expenses and allowances paid in connection with the travelling.

5. 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 IT Rule, r. 6D and the s. 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 pperiod when the person was not actually travelling, but remained outside the headquarters and had incurred expenditure on such a day. 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 the giving a narrow interpretation to the word "travelling" in s. 37(1) and r. 16, 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 periods 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.

6. As regards 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 Supreme Court held the 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 s. 40(c) of the Act would be applicable. That is what the Tribunal has held and we see no error in that finding.

7. 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 the cost of Rs. 750.

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