

(1997) 08 P&H CK 0114

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 13 and 14 of 1984

Beco Engineering Co. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 14-08-1997

Acts Referred:

Income Tax Act, 1961 — Section 32, 40A(5)

Citation : (1998) 144 CTR 529 : (1998) 1 ILR (P&H) 333 : (1999) 236 ITR 344

Hon'ble Judges : N.K. Agrawal, J; Ashok Bhan, J

Bench : Division Bench

Advocate : M.S. Jain and Adarsh Jain and S.K. Hiraji, for the Appellant; R.P. Sawhney, Senior Advocate and S.K. Sharma, for the Respondent

Judgement

N.K. Agrawal, J.—The following questions of law have been referred by the Income Tax Appellate Tribunal (for short "the Tribunal"), u/s 256(1) of the Income Tax Act, 1961 (for short, "the Act") :

(i) At the instance of the Department ;

"Whether the Tribunal was right in holding that for working out the amount to be disallowed u/s 40A(5) the amount taxed in the hands of the employees on account of the perquisite should be considered instead of the amount of actual expenditure incurred by the assessee for providing car to the employees ?"

(ii) At the instance of the assessee :

"1. Whether the Tribunal was right in law in holding that the Income Tax Officer had no option but to compute and allow the depreciation to the assessee in this year ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal misdirected itself in considering Rs. 5,400 as the perquisite value for the car used by the executives of the company u/s 40A(5) ?

3. Whether, on the facts and in the circumstances of the case, the loss of Rs.

66,698 due to fluctuation in foreign exchange rate at the time of repayment of foreign currency loan should be treated as capital expenditure ?"

2. The assessee-company was engaged in the business of manufacture and sale of machine tools at its head office at Ballabgarh and was running a rolling mill foundry unit and machine tools unit at its branch at Batala. A return for the assessment year 1977-78 (accounting year ending on December 31, 1976) was filed showing net income at "nil". The questions of law shall be examined as under :

Question in the Department's reference and question No, 2 in assessee's reference :

The assessee-company paid salary and provided perquisites to some employees. The Assessing Officer was of the view that total perquisites were in excess of the limit prescribed in Sub-section (5) of Section 40A of the Act, The assessee had computed the value of car facility provided to two employees which, however, was not accepted to be correct by the Assessing Officer.

3. The Assessing Officer looked into the actual expenditure incurred on the facility of car provided to the employees, V. K. Anand and T. S. Dhingra. Expenditure on car provided to V. K. Anand for personal use was Rs. 31,135 and that on the car provided to T. S. Dhingra for four months (on proportionate basis) was Rs. 9,249. The Assessing Officer took into account, besides the value of car facility, the perquisites like rent-free accommodation, salaries paid to personal servants, medical expenses, club membership fee, etc., in respect of each such employee and restricted the perquisites to 1/5th of the salary in the case of each employee.

4. The value of the perquisites is not to exceed 1/5th of the salary paid to an employee u/s 40A(5) of the Act. It was for that reason that the Assessing Officer disallowed the expenditure incurred by the assessee-company in providing facilities and perquisites to the employees in excess of 1/5th of the salary.

5. In appeal filed by the assessee against the disallowance, the Commissioner of Income Tax upheld the order of the Assessing Officer. In further appeal, the Tribunal took the view that the perquisite value of the two cars provided for personal use to the directors, V. K. Anand and T. K. Dhingra, should be restricted to that amount which was actually assessed in the hands of those employees. The Tribunal also held that the reimbursement of medical expenditure was not a perquisite.

6. Expenditure on the provision of a car to an employee is includible in the value of perquisites for the purposes of Section 40A(5) of the Act. The value of all perquisites including the facility of car provided to an employee is not to exceed 1/5th of the salary paid to him as laid down in Section 40A(5) of the Act. The aggregate value of all the perquisites is liable to be disallowed to the extent it exceeded the amount equivalent to 1/5th of the salary. The amount of medical

reimbursement is, however, not includible in the perquisites.

7. A Division Bench of this court had an occasion to examine a question relating to the free use of car provided by the assessee-company to its employees in Prem Nath Gangneja Vs. Edwardganj Public Welfare Association and Another, . The question there had arisen as to whether the value of the perquisite relating to the use of car was to be calculated with reference to Rule 3 of the Income Tax Rules, 1962. The court held that there could not be two different standards for assessment in respect of the employee and employer and the value must be calculated with reference to Rule 3.

8. The controversy in the present case actually arose from the restriction applied by the Income Tax Officer to the allowability of deduction in respect of the value of perquisites. He allowed deduction to the extent of 1/5th of the total salary paid to the employee. In the cases of the two employees, namely, V. K. Anand and T. S. Dhingra, the Assessing Officer, after calculating the salary, computed the value of the perquisites and restricted the value to 1/5th of the salary as under :

"1. Shri V. K. Anand :

Rs.

Rs.

A. Salary

45,871

Leave encashment

583

Bonus

360

46,814

Less : Allowable under the Act

46,814

B. Perquisites

(a) Rent-free accommodation provided by the company.

13,500

(b) Personal servants salaries

2,400

(c) Medical expenses reimbursed

3,379

(d) Car for personal use as discussed above

31,135

(e) Club membership fee paid by the assessee company.

500

50,914

Less : Allowable under the Act (1/5th of salary)

9,363

41,551

Disallowed : Rs. 41,551

2. Shri T. S. Dhingra

(A) (i) Salary

15,467

(ii) Leave encashment

12,717

(iii) Notice pay

10,500

(iv) Gratuity

21,000

59,684

Less : Allowable under the Act

59,684

(B) Perquisites

(a) Rent paid by the company.

4,000

(b) Servant allowance

887

(c) Medical exp. reimbursed

769

(d) Car for personal use as discussed above (proportionate exp. for four months)

9,249

(e) Rotary club membership fee paid by the asses-see-company.

240

(f) Premium on fire policy for company's furniture at GM's residence

160

15,305

Less : Allowable under the Act (at Rs. 1,000 p.m. for four months)

4,000

11,305

Disallowed-Rs. 11,305"

9. It would, thus, appear that the Assessing Officer did not make any specific disallowance in respect of the value of perquisites relating to the personal use of the car by the employees, The disallowance was made u/s 40A(5) of the Act of the value of the perquisites exceeding 1/5th of the salary. In this situation, there was no calculation of the perquisite value of the car under Rule 3 of the Income Tax Rules.

10. Looking to the disallowance made by the Assessing Officer, the controversy projected in the questions referred for opinion does not appear to be the real controversy. It is not the application of Rule 3 of the Income Tax Rules which needs to be examined but it is the disallowance of the value of perquisites in excess of 1/5th of the salary.

11. The question which actually arises from the controversy is whether the Assessing Officer was right in disallowing deduction of the value of perquisites in excess of 1/5th of the salary paid to the employee. The answer to the question is in the affirmative, i.e., in favour of the Revenue and against the assessee.

Question No. 1 in assessee's reference :

The controversy projected through the question whether the Assessing Officer has to allow depreciation to an assessee without there being a claim in this behalf has been examined by a Division Bench of this court in *Beco Engineering Co. Ltd. Vs. Commissioner of Income Tax*, . In that case, the assessee had filed a revised return in which he did not claim depreciation, etc., which had been claimed in the original return. It was held that since the assessee did not claim any depreciation or extra shift allowance in the revised return, the Income Tax Officer was right in not computing and allowing depreciation and extra shift allowance. A question about depreciation was examined again by this court in *Commissioner of Income Tax Vs. Friends Corporation*, . Following the view taken in *Beco Engineering Co. Ltd. Vs. Commissioner of Income Tax*, , it was held that the Income Tax Officer was not competent to allow depreciation suo motu against the wishes of the assessee.

12. Following the view taken by this court, the question raised in the present reference is answered to the effect that in case depreciation was not sought and claimed by the assessee, the Assessing Officer was not required to allow depreciation.

Question No. 3 in assessee's reference :

The assessee had incurred a loss of Rs. 66,698 due to fluctuation in the exchange rate. This loss occurred in the repayment of loan on account of change in the exchange rate. The loan was raised in foreign currency for the purchase of a machine from Germany. The Assessing Officer took the view that the loss was referable to the capital asset and was, therefore, not admissible as revenue expenditure but was in the nature of capital expenditure.

13. The assessee had purchased the machine outside India by securing a loan from IFCI. The loan was repayable in half yearly equal instalments in West German D.M. at the rate of 25,000 D.M. The rupee value of the repayment was debited to the machinery account in the initial year. The assessee paid two instalments of 25,000 D.M. each during the accounting year relevant to the assessment year under reference. The rupee equivalent of these instalments exceeded the amount as per the original exchange rate. The assessee had also purchased a machine on direct deferred payment basis. The rupee equivalent of the instalments paid for that machine also exceeded the original price by an amount of Rs. 4,308. The total amount of loss due to fluctuation in the exchange rate was thus Rs. 66,698.

14. The Tribunal upheld the view that the loss occurring due to fluctuation in the exchange rate was not revenue expenditure. The Assessing Officer was, however, directed to verify the arithmetical correctness of the amount paid by the assessee and to allow depreciation on that amount.

15. The Madras High Court in Commissioner of Income Tax Vs. South India Viscose Ltd., , examined a question whether the expenditure incurred on the higher payment of instalment due to change in the exchange rate was capital or business expenditure. The question was answered against the assessee with the observation that it was not allowable as business expenditure inasmuch as the payment related only to the purchase price of the machinery.

16. In CIT v. Elgi Rubber Products Ltd. [1996] 219 ITR 109, the Madras High Court again took the same view and held that devaluation of currency had a far-reaching effect on the price of machinery etc., purchased from a foreign country. It often increased the originally agreed price. If such increase is between the dates of the agreement and the acquisition of asset, the case is covered u/s 43(1) of the Act and the escalation in price would go to increase the actual cost.

17. The Gujarat High Court in Commissioner of Income Tax Vs. Rohit Mills Ltd., , has also taken the view that additional payment made in rupees on account of difference in the exchange rate becomes part of the cost of acquisition of the

asset acquired by the assessee and was not a revenue expenditure.

18. The Karnataka High Court has also taken a similar view in Commissioner of Income Tax Vs. Motor Industries Co. Ltd., and Hindustan Machine Tools Ltd. Vs. Commissioner of Income Tax, Karnataka-II, .

19. The facts in the present case before us make it clear that the assessee had to pay an extra amount towards the cost of the machine on account of fluctuation in the exchange rate. The cost of the machine increased due to change in exchange rate only.

20. This view finds support from the view taken by the other High Courts as discussed above.

21. Question No. 3 in the assessee's reference is answered in the affirmative, i.e., in favour of the Revenue and against the assessee.