
(2001) 04 MAD CK 0010

In the Madras High Court

Case No : Tax Case No. 777 of 1994 (Reference No. 389 of 1994) 26 April 2001

Commissioner of Income Tax

APPELLANT

Vs

ASHOK LEYLAND LTD.

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

Citation : (2002) 253 ITR 425

Hon'ble Judges : R. Jayasimha Babu, J;K. Gnanaprakasam, J

Bench : Full Bench

Advocate : Mrs. Chitra Venkataraman, for the Revenue P. P. S. Janarthana Raja, for the Assessee, for the Appellant;

Judgement

R. Jayasimha Babu, J.

For the assessment year 1980-81, four questions have been referred to us at the instance of the revenue. The question identical to the first question

was considered in a case concerning the same assessee in T. C. No. 846 of 1993 Commissioner of Income Tax Vs. Ashok Leyland Ltd., ,

decided on 21-2-2001, wherein, it was held that except the fee paid by the assessee to the export promotion council, the other claims for

weighted deduction, viz., salary paid to its employees engaged in export work, interest paid, on post shipment credit, bank charges and

commission are not to be given weighted deduction. Similar answer is required to be and is recorded for this assessment year as well. The benefit

of section 35B of the Income Tax Act, 1961, is, therefore, to be given to the assessee only in respect of the fee paid by it to the export promotion

council.

The first part of the second question concerns the correctness of the Tribunal's

view that the additional ground could be allowed to be raised for the first time before it. The view of the Tribunal is correct. The Apex Court has, in the case of National Thermal Power Co. Ltd. Vs.

Commissioner of Income Tax, , held that it is within the jurisdiction of the Tribunal to entertain a new ground for the first time, if the facts required

for answering the new plea are available on record. That part of the question is answered against the revenue.

So far as the second part of the second question is concerned, regarding the entitlement of the assessee to claim the benefit of section 35B of the

Act for the interest paid to the bank on export bill discounted, that part of the question has to be answered in favour of the revenue in the light of

the decision rendered by this court in T. C. No. 846 of 1993CIT v. Ashok Leyland Ltd. (supra)

So far as the third question concerning the Tribunal's holding that the commission paid to dealers should not be included for the purpose of

disallowance u/s 37(3A) of the Act is concerned, the answer has to be in favour of the assessee in the light of the decision of this court in the case

of Commissioner of Income Tax Vs. Print System Products, . That question is answered accordingly in favour of the assessee.

The fourth question concerns the interpretation of rule 6B of the Income Tax Rules as it stood for the relevant assessment year. The Tribunal took

the view that the computation required to be made therein was to be made in respect of the travels of the employee during the assessment year,

and not in respect of each travel. The Tribunal, in our view, was not correct in so holding. Rule 6D of the Rules, as it then stood, refers to

expenditure incurred by an assessee in connection with travelling by an employee within India. It provides that the amount that can be claimed as

expenditure in respect of such travel was the aggregate of the amounts computed in the manner set out in rule 6D(2) of the Rules. The items to be

taken note of therein are the expenditure actually incurred on the travel by rail, road, waterway or air and other expenditure including hotel

expenses or allowances paid in connection with such travel calculated at the rates specified in that rule for the period spent outside such

headquarters.

The intent of the rule clearly is that the computation required to be made under

the rule is to be made separately for each travel undertaken by the employee and the amount that can be claimed as deduction for the year is the aggregate of the amounts so calculated separately for each travel undertaken by the employee.

A similar view has also been taken by the Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Coramandel Fertilisers

Ltd., .

The last question is, therefore, answered in favour of the revenue and against the assessee.