(1994) 11 BOM CK 0026

In the Bombay High Court

Case No : IT Ref. No. 235 of 1983

Commissioner of Income Tax — APPELLANT

Vs

Audco India Ltd. — RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:
Income Tax Act, 1961 — Section 35, 40A(5)

Citation : (1994) 11 BOM CK 0026

Hon'ble Judges : S.M. Jhunjhunwala, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Deokinandan, G.S. Jetly and P.S. Jetly, instructed by Mrs. S. Bhattacharya, K.M.L. Majele, for the Appellant; P.J. Pardiwalla, instructed by Kanga and Co., for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this reference under s. 256(1) of the IT Act, 1961, the Tribunal has referred the following questions of law for opinion of this Court at the instance of the Revenue :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that reimbursement of medical expenses did not form a part of salary or a perquisite in applying the provisions of s. 40A(5) of the IT Act, 1961, for consideration of disallowance in computing the income of the assessee ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law to hold that the claim under s. 35 of the IT Act, in respect of depreciation on assets brought into use in scientific research unit in the prior years may be finally determined in the light of the Supreme Court''s decision in writ petition on this issue, which was yet to be pronounced in different group of cases, in spite of amendment to s. 35 of the IT Act, 1961 made by the Finance (No. 2) Act of 1980, which was applicable on the date of the decision of the Tribunal ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was

right in law in holding that reimbursement of medical expenses do not form a part of salary or perquisite in applying the provisions of s. 40A(5) of the IT Act, 1961, for consideration of disallowance in computing the income of the assessee ?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing extra-shift allowance and depreciation on diesel generator costing Rs. 11,69,723 in view of the provisions of the IT Rules Appendix-I, Part I(III)(iv)(i) holding that generator does not form part of ''stationary plant'' ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the surtax liability is not an allowable deduction ?"

2. Questions are numbered consecutively for the sake of convenience.

3. Questions No. 1 and 3 are covered by the decision of this Court in Commissioner of Income Tax, Bombay City-II Vs. Indokem Private Ltd., . Following the same, these questions are answered in the affirmative and in favour of the assessee.

4. So far as second question is concerned, the controversy regarding the liability of the depreciation in respect of assets brought into use in scientific research unit has already been decided by the Supreme Court in favour of the Revenue in Escorts Limited and Others Vs. Union of India and others, . In that view of the matter, we do not think that any fruitful purpose will be served by answering the question as framed. We, therefore, hold that the Tribunal will consider the allowability of the depreciation on the assets used in scientific research in the light of the decision of the Supreme Court referred to above.

5. The controversy raised by the Revenue in question No. 4 has become academic in view of the Circular of the Board dt. 3rd Feb., 1982 by which it has itself accepted the position that extra shift allowance and depreciation would be available as allowed by the ITO. In that view of the matter, we decline to answer this question.

6. Question No. 5 is covered in favour of the Revenue by the decision of this Court in Luorizol India Ltd. vs. CIT (1991) 187 ITR 25 . It is, therefore, answered in the affirmative and in favour of the Revenue.

7. This reference is disposed of accordingly.

8. No order as to costs.

