(2006) 12 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Commissioner of Income Tax APPELLANT

Vs

Avon Cycles Ltd. RESPONDENT

Date of Decision : 22-12-2006

Acts Referred:
Income Tax Act, 1961 — Section 80HHC

Citation : (2008) 303 ITR 345

Hon'ble Judges : Rajesh Bindal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The following questions of law have been referred for opinion of this Court arising out of the order passed by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for short, "the Tribunal"), in I.T.A. No. 1049/Chandi/95 dated July 26, 1996, in respect of the assessment year 1992-93:

1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting the addition of Rs. 4,81,000 made by the Assessing Officer on account of research and development expenditure for multi-speed freewheel, holding as business expenditure, while the payee does not manufacture the multi-speed freewheel ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting the addition of Rs. 2,70,000 on the ground that there is no nexus between the borrowings and the interest-free advances made to the managing director for non-business purposes, while the assessee has to pay the interest on money borrowed from outside agencies ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding the following expenses as business expenditure:

(i) Rs. 73,340 spent on costly items, i.e., silver utensils, silver glasses, etc., distributed to dealers, when the assessee himself agreed to this addition;

(ii) Rs. 11,890 spent on providing taxis to dealers and 25 per cent, of Rs. 33,407 spent on air fare provided to dealers ;

(iii) Rs. 56,777 spent on silver coins distributed to dealers;

(iv) Rs. 50,000 out of Rs. 99,570 spent on distribution of shawls, suits and sweaters distributed to dealers ;

(v) Rs. 69,000 spent on velvets, blankets and Rs. 77,614 on account of Titan watches distributed to dealers ; and

(vi) Rs. 92,609 debited by way of credits cards sign while the assessee failed to furnish details and nature of these expenditure?

4. Whether, on the facts and in circumstances of the case, the Income Tax Appellate Tribunal was right in law in directing the Assessing Officer to work out the deduction u/s 80HHC, on the basis of 90 per cent, of export incentive, as worked out under the provisions of Section 80HHC(3), by ignoring the loss computed under Clauses (a) and (b) of the said section?

5. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding to exclude ST, CST, trade discount, miscellaneous income and insurance claims from total turnover for computation of deduction u/s 80HHC?

6. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in not following the decision of the hon''ble Supreme Court in the case of Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal, , holding that the turnover is different from trading receipts, when trading receipts only make turnover?

7. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in allowing relief u/s 80HHC to the assessee resulting into income even below the income returned?

Question No. 1:

2. Briefly the facts as mentioned in the statement of case are that the assessee-company derives income from manufacture and sale of cycles and its spare parts. For the assessment year in question, the assessee paid a sum of Rs. 4,81,000 to its sister concern M/s. Avery Freewheels P. Ltd., on March 28, 1992, for developing multi-speed freewheels. The expenditure was disallowed by the Assessing Officer for the reason that the assessee was not engaged in the manufacture of free wheels. The order was upheld by the Commissioner of Income Tax (Appeals) (for short, "the CIT(A)"). The Tribunal accepted the plea of the assessee and allowed the expenditure as revenue during the year in question. The Tribunal while accepting the plea of the assessee observed that the expenditure of Rs. 4,81,000 made on research and development of multi-speed

freewheels was with a view to explore the export market and in fact during the next year these freewheels were purchased from the sister concern M/s. Avery Freewheels P. Ltd. and exported.

3. We have heard Shri S.K. Garg Narwana, advocate for the Revenue and Shri Akshay Bhan, advocate for the assessee.

4. Counsel for the Revenue submitted that since the assessee has not exported any freewheels during the year in question, the expense being not related to its business should not be allowed as revenue expenditure. Whereas on the other hand, counsel for the assessee submitted that the assessee is engaged in the business of manufacture and export of cycles and multi-speed freewheels. Freewheel is one of the parts of the cycle and if any amount is spent by the assessee on the research and development of the part of the cycle, the same cannot in any manner be said to be not related with the business of the assessee.

5. We find the contentions raised by counsel for the assessee to be convincing. A kind of expenditure which is on tools and improvement and modification of production machines was rightly treated to be revenue in nature by the Tribunal as the same is certain relatable to the business of the assessee. Accordingly, question No. 1 is answered against the Revenue and in favour of the assessee.

Question No. 2:

6. This issue relates to the disallowance of Rs. 2,70,000 being the interest calculated on advance of Rs. 15 lakhs to Shri H.R. Pahwa, managing director of the company. The claim of the assessee that the amount was advanced as security by the assessee to be utilised by Shri Pahwa for acquiring the property at Safdarjang Enclave, New Delhi, which was ultimately to be rented out to the company at a nominal rent. So accordingly, the business interest of the company was involved and the amount was not advanced without any business interest. This plea of the assessee was not accepted by the Assessing Officer, which order was upheld by the Commissioner of Income Tax (Appeals). Before the Tribunal, it was found that a resolution was passed by the company on July 6, 1989, to advance a sum of Rs. 15 lakhs to Shri Pahwa as a security in consideration for taking a property on rent at New Delhi and for fixing rent of the property, the amount of security was to be taken into consideration. The amount was advanced on July 8, 1989, i.e., after two days of the passing the resolution. It was also mentioned in the order that in fact Shri Pahwa had spent a sum of Rs. 60 lakhs on the said property and the advance given by the assessee was merely Rs. 15 lakhs. The property consisted of three floors on a plot of 450 square yards and for the reason that the assessee had advanced specific sum to Shri Pahwa, a small rent of Rs. 2,500 per month was fixed. Accordingly, the transaction was actuated by the business and commercial consideration. Besides this, the Tribunal while accepting the plea of the assessee also relied upon the nexus theory between the amount borrowed and the funds advanced.

7. Learned Counsel for the Revenue relying upon the judgment of this Court in

Commissioner of Income Tax-I Vs. Abhishek Industries Ltd., and submitted that a similar question has already been answered in favour of the Revenue wherein this Court has disapproved the nexus theory relied upon by the Tribunal to allow the interest as an expense on the interest-free advance made to the managing director for non-business purposes. On the other hand, counsel for the assessee though not disputing the enunciation of law by this Court in Commissioner of Income Tax-I Vs. Abhishek Industries Ltd., submitted that in the case in hand the Tribunal on fact found that the advance was not for non-business purposes, the same was actuated with the business consideration as the assessee was to get building, to be purchased by Shri Pahwa with the help of the interest-free advance, on rent which was lessor than the market rent. We do not find that the Tribunal has gone wrong in deciding this issue in favour of the assessee and against the Revenue. Business interest of the assessee in giving interest-free advance in the form of security is well established. Accordingly, endorsing the view taken by the Tribunal on this issue, the question is answered against the Revenue and in favour of the assessee.

Question No. 3:

8. As far as question No. 3 is concerned, the same has been gone into by this Court in I.T.A. No. 73 of 2005- Commissioner of Income Tax Vs. Avery Cycle Industries Ltd., decided on September 12, 2006, wherein after referring to an earlier judgment of this Court in the assessee''s own case reported as Avon Cycles (P) Ltd. Vs. Commissioner of Income Tax, it was held that distribution of gift articles to dealers certainly generates goodwill which has direct relation with the business of the assessee, accordingly, the question referred is answered against the Revenue and in favour of the assessee. As far as expenses of Rs. 92,609 spent through credit card are concerned, only 25 per cent. therefrom has been allowed as permissible expenses. The authorities below having taken a view on estimation basis even if a second view is possible, this Court will not substitute its own opinion unless the view taken by the authority below is not possible. Accordingly, we concur with the view taken by the Tribunal on this issue as well. Question No. 4:

9. It is not disputed before us that an identical question has been gone into by the hon''ble Supreme Court in IPCA Laboratory Ltd. Vs. Deputy Commissioner of Income Tax, Mumbai, wherein it has been held that for working out the incentives u/s 80HHC of the Act, the loss is not to be ignored. Following the dictum of law laid down in the above judgment, the question is answered in favour of the Revenue and against the assessee.

Question No. 5:

10. It is not disputed between the parties that an identical issue regarding sales tax, excise duty has been gone into by this Court in CIT v. Vardhman Polytex Ltd. in I.T.A. No. 241 of 2004 decided on August 21, 2006, wherein it has been held that the sales tax and central sales tax do not form part of the total turnover of

the assessee for the purpose of computation of incentives u/s 80HHC of the Act. Accordingly, this question is answered against the Revenue and in favour of the assessee.

Questions Nos. 6 and 7:

11. The questions at S. Nos. 6 and 7 are general in nature and no arguments were addressed thereon as the same seems to be consequential issues already referred to above on the computation of deductions u/s 80HHC of the Act. Accordingly, the same shall be treated to be answered in the question referred to above.

The reference is disposed of in the manner indicated above.

