(2001) 11 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : IT Ref. No''s. 49 to 51 of 1986 22 November 2001 A.Y. 1977-78

Commissioner of Income Tax APPELLANT

Vs

Avon Cycles (P) Ltd. RESPONDENT

Date of Decision : 22-11-2001

Acts Referred:
Income Tax Act, 1961 — Section 256, 35B

Citation : (2002) 173 CTR 267

Hon'ble Judges : Jawahar Lal Gupta, J;Jawahar Lal Gupra, J;Ashutosh Mohunta, J

Bench : Full Bench

Advocate : R.P. Sawhney with Kishan Singh, for the Revenue Sanjay Bansal, for the Assessee, for the Appellant;

Judgement

Jawahar Lal Gupta, J.

The contest between the parties relate to the assessment year 1977-78. The assessee had returned an income of Rs. 30,42,836. The assessing officer disallowed certain claims and found that the assessed taxable income was Rs. 35,99,140. The assessee filed an appeal. It was partially allowed. The revenue and the assessee challenged the order passed by the Commissioner (Appeals). The Tribunal granted partial relief to both sides. Still not satisfied, the revenue and the assessee filed petitions u/s 256(1) of the Income Tax Act, 1961. After consideration of the matter, the Tribunal has referred the following two questions for the opinion of this court :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the assessee''s claim of weighted deduction u/s 35B in respect of difference in exchange ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was not entitled to the export market development allowance by way of weighted deduction in terms of section 35B in

respect of the following expenditure :

Rs.

(i)

Clearing and forwarding charges

18,89,676

(ii)

Carriage outward

3,23,250

(iii)

Transit insurance charges

67,155

(iv)

Air freight charges

24,551

(v)

Bank commission

26,385

(vi)

Discount

2,630

(vii)

Interest on packing credit

3,49,067

(viii)

Other interest

18,980"

2. Mr. Sawhney, learned counsel for the revenue has contended that the assessee was not entitled to weighted deduction on account of fluctuation in the rate of exchange. He has referred to the decisions in Gedore Tools (India) Pvt. Ltd. Vs. Commissioner of Income Tax, Delhi-1, and Government of National Capital Territory of Delhi and Others Vs. Dr. Ranjana Amar and Others, . Mr.

Sawhney has further contended that the Tribunal had erred in accepting the assessee''s claim on the basis of its decisions in respect of the weighted deduction on account of difference in exchange rate for the assessment years 1974-75, 1975-76 and 1978-79. Mr. Sawhney has further contended that the assessee''s claim cannot be accepted as he had failed to produce evidence to show that the deductions were admissible.

3. Mr. Sanjay Bansal, learned counsel for the assessee, has contended that if it is the revenue''s own case that the Tribunal has erred in relying upon its earlier decisions and that the matter should be decided afresh after hearing the parties, then, even the deductions disallowed by the Tribunal to the assessee on the basis of the decisions for the assessment years 1974-75, 1975-76 and 1978-79, should not be sustained. The assessee should be given an opportunity to appear before the Tribunal and show that the deductions are within the ambit of one of the provisions contained in section 35B(1)(b) of the Act. Mr. Bansal contends that the revenue had failed to show that the weighted deduction allowed to the assessee on account of fluctuation in exchange rate was not covered by the provisions of section 35B(1)(b). It had accepted the decisions of the Tribunal in respect of the three assessment years. Having not challenged those orders, it is not entitled to reagitate the matter before this court.

4. After hearing learned counsel for the parties and in view of the decision of their Lordships of the Supreme Court in Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., , we dispose of these references by remitting the case to the Tribunal. The Tribunal shall decide the matter afresh after giving the parties an opportunity to prove their respective claims. Since we are remitting the matter, we do not consider it appropriate to comment upon the merits of the controversy as raised by the counsel. No costs.

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