(1998) 07 MAD CK 0020

In the Madras High Court

Case No : Tax Case Petition No''s. 830 and 831 of 1997 & Tax Case Petition No''s. 830 and 831 of 1997 (A.Y. 1992-93)

Commissioner of Income Tax APPELLANT

Vs

Balaji Distilleries Ltd. RESPONDENT

Date of Decision : 21-07-1998

Acts Referred:

Citation : (2002) 174 CTR 373

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

Advocate : Chitra Venkataraman, for the Appellant; V. Ramachandran for N. Mani, for the Respondent

Judgement

R. Jayasimha Babu, J.—The revenue has come up with this petition'' with a prayer to direct the Tribunal to refer the question set out in the

petition, which according to the revenue arises out of the order of the Tribunal on the appeals filed by the revenue and the assessee arising out of

the assessment of the respondent-assessee''s income for the assessment year 1992-93.

2. The assessee is a manufacturer of Indian made foreign liquor and the product manufactured by it is sold in bottles. The assessee procures a

larger number of second-hand bottles and breakage occurs in the course of transporting the same to the godown and at various subsequent stages

thereby resulting in loss. Assessee had been using bottles of 180 ml., 350 ml. and 750 ml. capacities. Assessee had claimed breakages in respect

of 375 ml. and 180 ml. bottles. The rate at which the breakages in claimed, in the view of the assessing officer was unacceptable. He was of the

view that breakages could not have exceeded 7 per cent in respect of 180 ml.

bottles. The assessing officer found that the purchase of bottles had

been effected from 3 suppliers. The quantity supplied to the assessee had been reported as part of the turnover of those suppliers. The assessing

officer was promoted to regard the assessee''s claim as excessive as he had found that the breakage reported by the other competitions was at a

lesser rate of 6.8 per cent and 5 per cent, respectively.

3. On appeal by the assessee, the Commissioner (Appeals) held that an allowance of 11 per cent towards breakages would be a fair estimate and

he held that the suppliers were genuine. On further appeal, the Tribunal held that the suppliers did exist and that they had in fact given invoices

which was in the custody of the department, that the shapes and sizes of the bottles was different from further supplied to others, and that the

higher price as also the larger volume of breakages had been properly explained by the assessee. The Tribunal had noted that the breakages would

occur when they are transported as also at the stage of cleaning and handling and packing. The higher rate of breakages was also found to be

caused by the use of high speed automatic machine which the assessee had newly installed. The bottles purchased by the assessee were second-

hand bottles, and, therefore, required a more thorough cleaning and in the process of cleaning and packing as also in the process of transportation

earlier, the breakages occurred and the rate of such breakages was higher in respect of bottles to purchased by the assessee. The Tribunal held

that the breakage was 15.25 per cent.

4. The facts considered by the Tribunal are all questions of fact and everyone of the authorities had made an estimate; for the assessing officer

though 7 per cent was fair, for the Commissioner (Appeals) 11 per cent was fair while for the Tribunal 15.25 per cent was a reasonable estimate.

We cannot prima facie further speculate for the purpose of fixing up yet another rate by way for estimate. The facts have been examined in

sufficient depth by the fact-finding authorities and the fact as determined by the Tribunal must be regarded as final.

5. We, therefore, do not find any merit in the revenue''s prayer to refer to this court the Tribunal''s finding regarding the percentage of breakages

which can be allowed, and we also do not find any merit in the prayer to direct the Tribunal to refer the question regarding the genuineness of the price paid by the assessee for the bottles, that question, being a question of fact, and the Tribunal having found that the supplier was genuine and

that the goods had been supplied and further that the higher price was due to the difference in shape and size of the bottles used by the assessee.

6. With regard to the remaining question, reference of which is sought, namely, whether the Tribunal was right in law and had valid material in

deleting the addition towards purchase of complimentary articles claimed by the assessee, we do think that we have to call for a reference as an

identical question has directed to be referred by this court in T.C.P. No. 569 of 1996 by order dated 17-8-1997, concerning this very assessee

relating to earlier assessment year.

7. The Tribunal is, therefore, directed to refer to the following question and submit a statement of case together with such. other materials as are

relevant for the purpose of answering the question :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law and had valid materials in deleting the addition towards

purchase of complimentary articles claimed by the assessee ?

