(2001) 03 BOM CK 0052

In the Bombay High Court

Case No : Income-tax Reference No. 407 of 1987

Commissioner of Income Tax — APPELLANT

Vs

Cadbury India Ltd. — RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 260A, 35C, 37

Citation : (2001) 168 CTR 340 : (2001) 249 ITR 475 : (2001) 118 TAXMAN 828

Hon'ble Judges : V.C. Daga, J;S.H. Kapadia, J

Bench : Division Bench

Advocate : R.V. Desai, P.S. Jetly and J.P. Devdhar, instructed by H.D. Rathod, for the Appellant; P.S. Kaka and Balakrishna, instructed by Crawford Bayley and Co., for the Respondent

Judgement

S.H. Kapadia, J.—The following question has been referred by the Tribunal for the opinion of this court u/s 256(1) of the Income Tax Act, 1961 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the depreciation allowance is an expenditure to be considered for weighted deduction u/s 35C of the Income Tax Act, 1961 ?"

2. Facts :

For the assessment year 1979-80, the assessee filed its return of income on July 13, 1979. The assessee claimed weighted deduction u/s 35C on the expenditure of Rs. 12,87,531 which amount included Rs. 34,305 which represented depreciation on certain assets. It was disallowed by the Assessing Officer on the ground that depreciation allowance is not an expenditure to be considered for weighted deduction u/s 35C of the Act. Being aggrieved, the matter was carried in appeal to the Commissioner of Income Tax (Appeals) who came to the conclusion following the decision of the Calcutta High Court in the case of Indian Leaf Tobacco Development Co. Ltd. Vs. Commissioner of Income Tax, that the depreciation should be treated as expenditure and should be allowed as weighted deduction. Being aggrieved by the decision of the first appellate authority, the Department carried the matter in appeal to the Tribunal. The appeal was dismissed. Hence, the Department has filed this appeal u/s 260A of the Income Tax Act.

3. Arguments :

Mr. Desai, learned senior counsel appearing on behalf of the Department, contended that Section 35C of the Income Tax Act, as it stood at the relevant time, is an independent section. That, it should not be read along with other sections of Chapter VI. He contended that Section 35C gives a weighted deduction for providing to an agriculturist the goods, services or facilities specified in it. He contended that u/s 35C, the expenditure incurred by the assessee must have a direct nexus to the facilities or the goods supplied to a cultivator. He contended that the expenditure referred to in Section 35C cannot be equated to depreciation. He contended that the reference to the amount of expenditure in Section 35C of the Act would mean actual expenditure whereas depreciation was a notional expenditure and, therefore, depreciation cannot be claimed as an item of deduction. He fairly conceded that the above issue stands covered by the judgment of the Calcutta High Court in the case of Indian Leaf Tobacco Development Co. Ltd. Vs. Commissioner of Income Tax, and also by the judgment of the Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Vazir Sultan Tobacco Co. Ltd., . However, he contended that there is no judgment of this court on the interpretation of Section 35C. He, therefore, urged that agricultural development allowance would cover only actual expenditure incurred in respect of the goods provided to the cultivator and it would not cover depreciation on the assets.

4. Mr. Kaka, learned counsel for the assessee, on the other hand, contended that depreciation is not a notional expenditure. He contended that Section 35C refers to capital expenditure. He submitted that u/s 37 of the Income Tax Act, capital expenditure is excluded. He contended that depreciation is a prepaid expenditure. In this connection, Mr. Kaka placed reliance on the judgment of the Supreme Court in P.K. Badiani Vs. The Commissioner of Income Tax, Bombay, in which it has been held that the depreciation charged represents an example of prepayment. Mr. Kaka accordingly submitted that the depreciation charged is not a notional expenditure. That, it is an actual expenditure. He also relied upon the judgment of the Madhya Pradesh High Court in the case of M.P. Financial Corporation Vs. Commissioner of Income Tax, in which it has been held that the word "expenditure" is not defined in the Income Tax Act. That the word "expenditure" includes a loss. That the Madhya Pradesh High Court followed the judgment of the Calcutta High Court referred to above. Mr. Kaka further relied upon the judgment of the Supreme Court in the case of M/s. Madras Industrial Investment Corporation Ltd. Vs. The Commissioner of Income Tax, Tamil Nadu-I, Madras, in which it has been held that expenditure denotes spending or paying out. It may also cover an amount of loss. It also covers a liability which the

assessee has incurred in the present. In the said judgment/the Supreme Court has affirmed the decision of the Madhya Pradesh High Court referred to above. In the circumstances, learned counsel contended that the expenditure contemplated by Section 35C is in the nature of a capital expenditure. In the circumstances, depreciation was an expenditure contemplated by Section 35C. He further contended that Section 35C was enacted in order to give encouragement to agricultural activity and, therefore, the beneficial interpretation should be given to Section 35C.

5. Findings :

We find merit in the contention advanced on behalf of the assessee. Section 35C finds place in Chapter IV which deals with computation of business income. Section 35C, as it stood at the relevant time, provided for agricultural development allowance. The assessee could not have claimed deduction on account of depreciation in this case u/s 37 because the said section excludes capital expenditure. It is for this reason that the Legislature has provided for deduction of the amount of expenditure u/s 35C in cases where the expense incurred is a capital expenditure. u/s 35C where the goods, services or facilities provided to the agriculturist or a cultivator consist of tools or implements like an electric pump, the assessee-company is certainly entitled to claim depreciation because the value of the asset, viz., the electric pump gets diminished by its use in connection with the services or facilities provided to the cultivator and, consequently such reduction in its value would have to be treated as an expenditure while arriving at the taxable income of the assessee. This is the ratio of the judgment of the Andhra Pradesh High Court in the case of Commissioner of Income Tax Vs. Vazir Sultan Tobacco Co. Ltd., as also of the judgment of the Calcutta High Court in the case of Indian Leaf Tobacco Development Co. Ltd. Vs. Commissioner of Income Tax, . We agree with the view expressed by the aforestated judgments.

6. Accordingly, the above question is answered in the affirmative, i.e., in favour of the assessee and against the Department.

7. Reference is disposed of accordingly.

