
(1992) 05 DEL CK 0022

In the Delhi High Court

Case No : Income-tax Reference No. 33 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Continental Device India Ltd.

RESPONDENT

Date of Decision : 19-05-1992

Acts Referred:

Citation : (1992) 108 CTR 370 : (1992) 198 ITR 680

Hon'ble Judges : Mahinder Narain, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : B. Gupta, Adv M.S. Sayali, for the Appellant;

Judgement

B.N. Kirpal, J.—In respect of the assessment years 1974-75 and 1975-76, out of the orders passed in the appeals filed by the assessed as well as the Department, the following four questions of law have been referred to this court section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") :

Whether, on the facts and in the circumstances of the case, the Tribunal is legally correct in holding that borrowed capital should not be excluded in computing the capital employed for the purpose of section 80J ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is legally correct in holding that for the purpose of section 80J, average of capital employed during the entire accounting year should be taken into accounting year ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal erred in law in holding that for the purposes of computation of capital u/s 80J the depreciable assets should be taken at the written down value and not at the original cost thereof ?

4. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal having found that expenses under the head salary, bonus,

postage and telegrams, telephone and telex, traveling and printing and stationery, included those covered by items enumerated u/s 35B, it was correct in law in holding that a proportionate part of the aggregate expenses under those heads was eligible for development allowances u/s 35B ?"

2. So far as question Nos. 1 to 3 are concerned, they deal with the problem with regard to the deduction u/s 80J of the Act. It is not necessary for us to deal with the facts relating to these question in any great detail because counsel for both the parties are agreed that, by virtue of the decision of the Supreme Court in the case Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, , the said questions have to be answered against the assessed.

3. So far as question No. 4 is concerned, the assessed claimed export markets development allowance u/s 35B of the Act, inter alia, in respect of foreign traveling, salaries, bonus, provident fund, staff welfare, postage, telephone and telex and printing and stationery.

4. In respect of the assessment year 1974-75, the Income Tax Officer allowed deduction u/s 35B of the Act in respect of the expenditure on foreign traveling amounting to Rs. 91,841. For the assessment year 1975-76, the Income Tax Officer allowed weighted deduction only on foreign traveling and that too to the extent of Rs. 46,133.

5. The Appellate Assistant Commissioner upheld the order of the Income Tax Officer in respect of the assessment year 1974-75. However, for the assessment year 1975-76, the Commissioner of Income Tax (Appeals) allowed weight the deduction on the expenditure on salaries to the extent of Rs. 81,028. Out of the expenditure of Rs. 49,665 on postage, telephone, telex, traveling and conveyance, and printing and stationery, the Commissioner of Income Tax (Appeals) allowed weighted deduction at the rate of 25 per cent. of the said expenditure. i.e., Rs. 12,416.

6. Further appeals were filed to the Tribunal by both the parties. In respect of the assessment year 1974-75, the amount of weighted deduction which was not allowed by the Income Tax Officer was Rs. 1,54,304. Out of this expenditure, the expenditure to the extent of Rs. 1,13,045 was on salaries, bonus and provident fund. After satisfying itself that the expenditure claimed by the assesseds on salaries, etc., was in respect of those employees who were directly connected with the export, the Tribunal directed that weighted deduction should be allowed on 75 per cent. of the expenditure of Rs. 1,13,045. In respect of the balance expenditure of Rs. 41,259 incurred on staff welfare, postage, telephone and telex, etc., the Tribunal directed that it would be appropriate to allow weighted deduction on 50 per cent. of the said expenditure.

7. For the assessment year 1975-76, the Income Tax Officer himself had allowed weighted deduction on Rs. 46,133 out of the expenditure on foreign traveling amounting to Rs. 50,245. The Tribunal agreed with the Commissioner of Income Tax (Appeals) that weighted deduction was not admissible on the expenditure of

Rs. 4,112 incurred on the training of an employee as this expenditure was not directly connected with exports. On the expenditure of Rs. 1,62,056 on salaries, bonus, provident fund, etc., the Commissioner of Income Tax (Appeals) had allowed weighted deduction to the extent of 50 per cent. of the said expenditure. After satisfying itself that the expenditure claimed was in respect of those staff which are directly connected with the exports, the Tribunal directed that weighted deduction should be allowed on 75 per cent. of the expenditure of Rs. 1,62,056. On the expenditure of Rs. 49,665 incurred on postage, telephone, telex, traveling and conveyance and stationery, the Commissioner of Income Tax (Appeals) had allowed weighted deduction to the extent of 25 per cent. of the said expenditure but the Tribunal directed that weighted deduction should be allowed on 50 per cent. of the expenditure of Rs. 49,665. While considering the allow ability of weighted deduction on commission of Rs. 95,633, the Tribunal agreed with the Commissioner of Income Tax (Appeal) that weighted deduction was not admissible on the expenditure of Rs. 70,993. The Tribunal, however, allowed weighted deduction on commission of Rs. 24,640 as this expenditure was directly connected with exports.

8. On the aforesaid findings, the Tribunal has referred question No. 4 to this court.

9. On the basis of the evidence on record, the Tribunal has come to the conclusion that the said expenditure was entitled to weighted deduction u/s 35B of the Act. It found as a fact that expenditure under the head salary, bonus, postage, telegram, telephone, telex, traveling and printing and stationery were directly relatable to the exports of the assessed, and thereupon decided that a proportionate part of the aggregate of the expenses was allowable for allowance u/s 35B the Act. The finding of the Tribunal that these expenses were directly relatable to the exports and were covered by section 35B of the Act is a finding of fact. This has been so held by this court, firstly in the case Commissioner of Income Tax, Delhi (Central-I) Vs. Raunaq International Ltd., . In that case, the Tribunal had come to the conclusion that a certain percentage of the expenses incurred by the assessed towards repairs and renewals, directors' remuneration, printing and stationery, etc., were all items that promoted export development, and that a certain percentage of the expenses incurred were allowed as a deduction. This court came to the conclusion that the said finding of the Tribunal did not give rise to any question of law, and, Therefore, the application of the Department u/s 256(2) of the Act was rejected. Following the said decision in Commissioner of Income Tax Vs. Usha Sales Ltd. (No. 1), , it was held that a similar question was a question of fact. To the same effect is a decision reported as Commissioner of Income Tax Vs. Usha Sales Ltd. (No. 2), . Thereafter this court again had an occasion to consider an application u/s 256(2) of the Act, where a similar question of law was sought to be raised, and in Commissioner of Income Tax, Delhi-I Vs. Indian Aluminium Cables Ltd. (No. 2), , a Division Bench of this court came to the conclusion that the question proposed was a question of fact. Lastly, in the case Commissioner of Income Tax, (Central-II) Vs. Electric

Construction and Equipment Co. Ltd. (No. 1), , it was again held that the Tribunal's findings that the expenditure incurred relating to export promotion, was a question of fact, and that no question of law arose. It has been held the Supreme Court in Commissioner of Income Tax, West Bengal, Calcutta Vs. Smt. Anusuya Devi, , that when a question which is referred to the High Court is essentially a question of fact, the High Court may decline to answer such a question notwithstanding that a reference has made.

10. The question as proposed at the instance of the Department clearly postulates that the expenses which have been claimed under different heads are covered by the items which are enumerated u/s 35B(1)(b) of the Act. In view of this claim findings of fact, it must follow that the assessed was entitled to the claim for deduction u/s 35B of the Act on the proportionate part of the aggregate of expenses under those heads. The question so referred, Therefore, has to be answered in favor of the assessed.

11. For the aforesaid reasons, while questions Nos. 1 to 3 are answered in favor of the Revenue, question No. 4 is answered in favor of the assessed.

12. There will be no order as to costs.