(2005) 01 GUJ CK 0013

In the Gujarat High Court

Case No : IT Ref. No. 330 of 1992

Commissioner of Income Tax — APPELLANT

Vs

Dinesh Mills Ltd. — RESPONDENT

Date of Decision : 19-01-2005

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (2005) 199 CTR 509

Hon'ble Judges : H.N. Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : D.D. Vyas, for the Appellant; Manish J. Shah and J.P. Shah, for the Respondent

Judgement

D.A. Mehta, J.—Mr. D.D. Vyas, the learned standing counsel appearing on behalf of the applicant-Revenue submits that, through oversight, the applicant-Revenue has not filed paper book, as required by rules of this Court, but prays for dispensing with filing of the paper book in light of the fact that the two questions referred for the opinion of this Court stand concluded by decisions of this Court. Accordingly, it is directed that filing of paper book be dispensed with.

2. The Tribunal, Ahmedabad Bench ''A'' has referred the following two questions for the opinion of this Court at the instance of CIT, Baroda u/s 256(1) of the IT Act, 1961 (the ''Act'') :

"(1) Whether, on the facts and in the circumstances of the case and in law, the Tribunal has erred in holding that a sum of Rs. 20,000 out of motor car expenses is not disallowable on the ground of personal and non-business use of motor car in the hands of the assessee ?

(2) Whether, on the facts and in the circumstances of the case and in law, the Tribunal is right in holding that the assessee was entitled to investment allowance on computer ORG 200-B microprocessor ?"

3. The assessment year is 1982-83 and the relevant accounting period is 31st

Dec., 1981. The assessee, a limited company, claimed certain expenses incurred on running of motor cars of the company. The AO disallowed a sum of Rs. 20,000 by way of lump sum disallowance holding that, as in past, the said sum must have been incurred for non-business and personal expenses. The CIT(A) relied on Tribunal''s decision for asst. yr. 1981-82 in assessee''s own case and deleted the disallowance of Rs. 20,000 made out of total motor car expenses. The Tribunal confirmed the order of CIT(A).

4. In the statement of case, the Tribunal has stated that, for immediately preceding assessment, namely, asst. yr. 1981-82, on identical facts, a reference has already been made on 14th Dec., 1987. Mr. Manish J. Shah, the learned advocate appearing on behalf of the respondent-assessee, has pointed out that, for the said assessment year, the matter was decided in favour of the assessee in decision rendered on 24th Oct., 2002 in IT Ref. No. 20 of 1998 by this Court, while answering questions referred at the instance of Revenue.

5. In relation to question No. 2, the AO disallowed claim of investment allowance on the ground that the computer ORG 200-B microprocessor could not be considered as an item of plant and machinery since it was not connected with the manufacturing activity of the assessee. The CIT(A), relying on the decision of Bombay High Court in case of Commissioner of Income Tax, Bombay City-I Vs. I.B.M. World Trade Corporation, , held that the assessee was entitled to investment allowance. The Tribunal confirmed the finding of CIT(A) after referring various judgments in its impugned order.

6. Both Mr. D.D. Vyas, the learned standing counsel for the applicant-Revenue and Mr. Manish J. Shah, the learned advocate for the respondent-assessee, accepted the fact that identical controversy has been decided by this Court in case of CIT v. Professional Information Systems & Management (IT Ref. No. 304 of 1992) decided today, i.e., 19th Jan., 2005 by this Court, and that the said issue stands concluded by the aforesaid decision of this Court.

7. Accordingly, question No. 1 relating to motor car expenses is answered in favour of the assessee and against the Revenue, following the decision in earlier year in assessee''s own case as well as the decision in case of Sayaji Iron and Engg. Co. Vs. Commissioner of Income Tax,

7.1 Similarly, question No. 2 is also answered in favour of the assessee and against the Revenue following the decision in case of CIT v. Professional Information Systems & Management (supra) rendered in IT Ref. No. 304 of 1992.

8. The reference stands disposed of accordingly. There shall be no order as to costs.