(1997) 11 MAD CK 0211

In the Madras High Court

Case No : Tax Case No. 582 of 1988 (Reference No. 446 of 1988)

Commissioner of Income Tax APPELLANT

Vs

India Pistons Repco Ltd. RESPONDENT

Date of Decision : 24-11-1997

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 28, 35B

Citation : (1999) 240 ITR 656

Hon'ble Judges : P. Thangavel, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; P.P.S. Janarthana Raja, for the Respondent

Judgement

N.V. Balasubramanian, J.—In pursuance of the directions of this court in T.C. P. No. 186 of 1984, dated December 4, 1934, the Income Tax Appellate Tribunal, Madras, has referred the following question of law u/s 256(2) of the Income Tax Act for the assessment year 1980-81 for our opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in holding and had valid materials to hold that the assessee is entitled to the deduction u/s 35B in respect of the commission paid to Amalgamations Limited and also on its share of contribution paid to India Pistons Limited for participating in a trade exhibition ?"

2. The question referred to us consists of two parts one regarding the claim of the assessee for weighted deduction in respect of the commission paid to Amalgamations Ltd., and another in respect of its share of its contribution paid to India Pistons Limited for participating in an international trade exhibition.

3. The assessee is a company and the assessee claimed weighted deduction under the provisions of section 35B of the Income Tax Act, 1961 (hereinafter referred to as ''the Act''), in its assessment proceedings for the assessment year 1980-81 and the claim of the assessee for weighted deduction in respect of the

commission paid to Amalgamations Ltd., and another in respect of its share of its contribution paid to India Pistons Limited for participating in an international trade exhibition.

4. The assessee is a company and the assessee claimed weighted deduction under the provisions of section 35B of the Income Tax Act 1961 (hereinafter referred to as "the Act"), in its assessment proceedings for the assessment year 1980-81 and the claim of the assessee related to the following items of expenditure.

Rs. 1. Share of Australian office expenditure 12,000 paid to Amalgamations Ltd. 2. Share of export promotion division 3,600 expenditure paid to Amalgamations Ltd. 3. Commission paid to Amalgamations 17,430 Ltd. on export sales 4. Share of expenditure for participation 32,450 in Second Asian Automotive and Accessories Exhibition at Singapore --------- 65,480 --------- 1/3rd thereof Rs. 21,827.

5. The Income Tax Officer rejected the claim of the assessee for weighted deduction in so far as it related to the commission paid to Amalgamations Ltd., on export sales and the share of its expenditure for participation in Second Asian Automotive and Accessories Exhibition at Singapore on the ground that the assessee has not established the link between the expenditure and the items enumerated u/s 35B of the Act. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals) against the order of the Income Tax Officer denying its claim for weighted deduction on the share of export promotion division expenditure and the commission paid to Amalgamations Ltd. and on the share of the expenditure for participation in the second Asian Automotive and Accessories Exhibition. The Commissioner of Income Tax (Appeals) held that the commission paid to Amalgamations Ltd., was not covered by any of the provisions of section 35B of the Act, and further the commission was also paid in India and hence the assessee was not entitled to claim weighted deduction. In so far as the share of expenditure for participation in the Second Asian Automotive and Accessories Exhibition is concerned, he held that the assessee has not participated in the said exhibition and, therefore, the assessee was not entitled to claim weighted deduction.

6. The assessee carried the matter in appeal before the Income Tax Appellate Tribunal. In so far as the claim of the assessee relating to the commission paid to Amalgamations Ltd. is concerned, the Appellate Tribunal followed its earlier order passed for the assessment years 1976-77 and 1979-80 and held that the assessee is entitled to weighted deduction in respect of the commission paid to Amalgamations Ltd. As regards the claim of the assessee for weighted deduction in respect of the share of expenditure in participating the Second Asian Automotive and Accessories Exhibition is concerned, the Tribunal has found that on the basis of the bills produced by the assessee, the assessee had participated in the exhibition and, therefore, the assessee is entitled to weighted deduction u/s 35B of the Act in respect of the sum of Rs. 32,450 also. The Appellate Tribunal

thus allowed the appeal preferred by the assessee as regards the two items claimed by the assessee for weighted deduction.

7. Mr. C. V. Rajan, learned counsel for the Revenue, submitted that the assessee is not entitled to weighted deduction in respect of both the items as the expenditure incurred cannot be brought in within in any of the items enumerated u/s 35B of the Act and there is no nexus between the expenditure and the items mentioned u/s 35B of the Act, and the assessee is not entitled to weighted deduction. He however, fairly brought to our notice an earlier unreported decision of this court in Commissioner of Income Tax Vs. India Pistons Repco Ltd.,), wherein this court has held that the assessee was entitled to weighted deduction in respect of the commission paid to Amalgamations Ltd., Mr. P. P. S. Janarthana Raja, learned counsel for the assessee, submitted that the decision of this court in Commissioner of Income Tax Vs. India Pistons Repco Ltd., would apply to the commission paid to Amalgamations Ltd. As regards the share of expenditure incurred by the assessee in the participation in the Second Asian Automotive and Accessories Exhibition is concerned, learned counsel for the assessee submitted that the assessee had participated in the exhibition by exhibiting its goods in the foreign country and thereby it has incurred an expenditure towards either advertisement or publicity of the goods or for obtaining information regarding the market outside India, and, therefore, the assessee is eligible to claim weighted deduction in respect of its share of expenditure incurred for participating in the exhibition.

8. We have carefully considered the submissions of learned counsel. In so far as the commission paid to Amalgamations limited is concerned, this court in Commissioner of Income Tax Vs. India Pistons Repco Ltd., rendered in the assessee''s own case, has held that the assessee is eligible to claim weighted deduction in respect of the commission paid to Amalgamations Ltd. This court in the above judgment has upheld the view of the Appellate Tribunal that the assessee was eligible for weighted deduction in respect of the said expenditure. We are of the view that since the facts prevailing in the earlier decision rendered in the assessee''s own case are the same, we hold that the Appellate Tribunal was right in holding that the assessee is entitled to weighted deduction u/s 35B of the Act in respect of the commission paid to Amalgamations Ltd.

9. In so far as the claim of the assessee for weighted deduction in respect of his share of contribution paid to India Pistons Ltd. is concerned, the Income Tax Officer has not allowed the claim of the assessee on the ground that there was no nexus between the expenditure and the items enumerated u/s 35B of the Act. The Commissioner of Income Tax (Appeals) disallowed the claim on the ground that the assessee had not participated in the said exhibition The order of the assessment clearly shows that the exhibition was held in a foreign country, viz., Singapore. The Appellate Tribunal on a perusal of the material came to the conclusion that the assessee had participated in the exhibition. The logical inference that flows from the above finding of the Appellate Tribunal is that the

assessee had displayed its articles in the Second Asian Automotive and Accessories Exhibition held at Singapore and since there was a display of the assessee''s articles in a foreign country, it would amount to either advertisement of its goods or publicity of its goods outside India. The purpose behind the act of the assessee in participating in the exhibition also shows that it was inviting trade enquiries about the assessee''s products in the foreign country which would enable the assessee to obtain information regarding the markets outside India and it is significant to note that the expenditure was incurred only in connection with the export of the assessee''s products. Since by the display of the goods made in an international exhibition there was a publicity or advertisement of its products eliciting information regarding markets outside India, we are of the view that the claim of the assessee would fall either under sub-clause (i) or sub-clause (ii) of clause (b) of sub-section (1) of section 35B of the Act. We are, therefore, of the view that there is no infirmity in the order of the Appellate Tribunal in holding that the assessee is entitled to weighted deduction in respect of the share of contribution by the India Pistons Repeo Ltd., when it participated in the international trade exhibition held in the foreign country.

10. We answer the question of law referred to us in the affirmative and against the Revenue. No costs.