(2003) 01 DEL CK 0075

In the Delhi High Court

Case No : Income-tax Reference No. 295 of 1983

Commissioner of Income Tax APPELLANT

Vs

Jay Engineering Works Ltd. RESPONDENT

Date of Decision : 16-01-2003

Acts Referred:

Citation : (2003) 260 ITR 467 : (2004) 135 TAXMAN 92

Hon'ble Judges : Madan B. Lokur, J;D.K. Jain, J

Bench : Division Bench

Advocate : Sanjiv Khanna and Subhash C. Sharma, for the Appellant; Santosh K. Aggarwal, for the Respondent

Judgement

D.K. Jain, J.—At the instance of the Revenue, the Income Tax Appellate Tribunal, Delhi Bench-C (for short "the Tribunal"), has referred u/s 256(1) of the Income Tax Act, 1961 (for short "the Act"), the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that foreign tour expenditure of Rs. 47,316 was an allowable deduction ?"

2. Briefly stated, the material facts, as emanating from the statement of the case, are that during the previous year ending on March 31, 1974, and relevant to the assessment year 1974-75, the assessed, who is stated to be engaged in the business of manufacture of fans and sewing machines, had debited a sum of Rs. 94,632 as traveling expenses incurred by the company''s chairman, Shri Charat Ram, and one of the executives, namely, Shri B. K. Ghai, on their travel to Europe and the USA. However, while computing its total income for the said assessment year, the assessed claimed only 50 per cent. of the said expenses as business expenditure. While completing the assessment, the Income Tax Officer disallowed even the remaining 50 per cent. of the expenses claimed by the assessed on the ground that the said expenditure had been incurred for entering

into collaboration for setting up a new unit, namely, a fuel injection unit and, Therefore, the same was capital in nature and, further, the expenditure incurred on studying export potentialities was only incidental to the main purpose of the foreign tour and, Therefore, was not allowable as revenue expenditure u/s 37 of the Act. The assessed''s appeal to the Appellate Assistant Commissioner was unsuccessful. The matter was carried in further appeal by the assessed to the Tribunal which upheld the stand of the assessed.

3. On the Revenue moving an application u/s 256(1) of the Act, the aforenoted question has been referred for our opinion.

4. We have heard Mr. Sanjiv Khanna, learned senior standing counsel for the Revenue, and Mr. Santosh K. Aggarwal, learned counsel for the assessed.

5. It is vehemently submitted by Mr. Khanna that the assessed being engaged in the business of manufacture of fans and sewing machines, setting up of a fuel injection unit cannot be regarded as an extension of the unit manufacturing the aforenoted items and, Therefore, the Tribunal erred in holding that the said expenditure was incurred for extension of the assessed''s existing business. Learned counsel would submit that even in the final order passed in the assessed''s application u/s 254(2) of the Act, the Tribunal has not indicated any reason as to how it has come to the conclusion that the said expenditure was incurred for extension of the existing business. Mr. Aggar-wal, learned counsel for the assessed, on the other hand, while supporting the view taken by the Tribunal, has contended that the basis of the Tribunal''s coming to the conclusion that the fuel injection plant was essential to the assessed''s existing business can be gathered from the submissions of counsel for the assessed, noticed in paragraph 9B of the order dated November 22, 1982, passed in the miscellaneous application.

6. Having carefully perused the order of the Tribunal, dated May 17, 1982, which was rectified vide order dated November 22, 1982, we are unable to agree with learned counsel for the assessed. As noted by the Tribunal in its order dated November 22, 1982, the penultimate paragraph of its earlier order has been substituted by the order passed in the rectification application. In paragraph 9C of the said order, the Tribunal has concluded thus :

"We have given consideration to the above arguments. We accept the assessed''s contention that the Income Tax Officer was not justified in disallowing Rs. 47,316 out of foreign traveling expenses of the aforesaid S/S Charat Ram and B.K. Ghai on the expenditure incurred on the assessed''s business. We accordingly delete addition of Rs. 47,316."

7. It is evident from the afore-extracted paragraph that the Tribunal has not given any reason whatsoever to come to the conclusion that the fuel injection plant was an extension of the assessed business. As a matter of fact, it is also not clear from the statement of the case as to which part of the surrendered 50 per cent. of the total expenditure, incurred by the assessed, was attributed by it

to the fuel injection plant and for studying export potentialities. In the absence of material facts, we are unable to answer the question referred. We feel that under the circumstances the best course would be to remit the matter back to the Tribunal for reconsideration of the entire issue. We order accordingly.

8. The reference stands disposed of in the above terms with no order as to costs.