
(1988) 11 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 17 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Maltex Malsters Ltd.

RESPONDENT

Date of Decision : 24-11-1988

Acts Referred:

Income Tax Act, 1961 — Section 28, 37, 40, 80J

Citation : (1989) 179 ITR 41

Hon'ble Judges : S.S. Sodhi, J;Gokal Chand Mital, J

Bench : Division Bench

Advocate : Ashok Bhan and Ajay Mittal, for the Appellant; Sudershan Goyal, for the Respondent

Judgement

Gokal Chand Mital, J.—One question has been referred by the Income Tax Appellate Tribunal, Chandigarh, on the basis of Reference Application No. 117 filed by the assessee. Similar question was referred to this court in Income Tax Reference No. 99 of 1980 (Highway Cycle Industries Ltd. Vs. Commissioner of Income Tax,) and on November 15, 1988, we decided the question in favour of the Revenue. For the reasons recorded therein, we answer the question in favour of the Revenue, that is, in the affirmative.

2. The Revenue filed Reference Applications Nos. 15 and 16 and at its instance, three questions have been referred, which have been numbered as questions Nos. (1) to (3). At the instance of the assessee, a fourth question has been referred as cross-question to questions referred at the instance of the Revenue and has been numbered as question No. 4. We proceed to answer the questions, which are given below, seriatim.

3. Question with regard to R. A. No. 117 filed by the assessee :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the liability on account of surtax was not admissible as deduction for computing the taxable income under the heard "Profits" u/s

28/37 of the Income Tax Act, 1961 ?"

4. Questions with regard to R. A. Nos. 15 and 16 filed by the Revenue :

(1) Whether on the facts and in the circumstances of the case, the Tribunal was in error, in law, in holding that for the purpose of computing capital for determining permissible deduction u/s 80J of the Act to the assessee, debts owed and liabilities were not to be adjusted from the assets in respect of assessment years 1975-76 and 1976-77 ?

(2) Whether on the facts the Tribunal was in error, in law, in holding that the commission paid by the assessee-company to its sole selling agency firm, did not constitute expenditure of the nature contemplated by Section 40(c) of the Income Tax Act, 1961, for the assessment years 1975-76 and 1976-77?

(3) If the answer to question No. 2 is in the affirmative, whether the Tribunal was in error, in law, in holding that payment to the sole selling agency firm could not be considered as payment by the assessee company to the minor children of the directors of the assessee-company and, therefore, no disallowance could be made by invoking the provisions of Section 40(c) of the Income Tax Act, 1961, again for the two assessment years, namely, 1975-76 and 1976-77 ?

(4) Whether the Tribunal was in error, in law, in holding that even if the provisions of Section 40(c) could be said to be applicable, each of the minors having shared profit of a sum less than Rs. 72,000 from the sole selling agency firm, no addition could be made u/s 40(c) of the Act for the assessment years 1975-76 and 1976-77 ?

5. Question No. (1) stands concluded in favour of the Revenue on the basis of the judgment in Lohia Machines Ltd. and Another Vs. Union of India (UOI) and Others, . Following the same and for the reasons given therein, the question is answered in the affirmative.

6. Question No. (2) is covered by a decision rendered in Commissioner of Income Tax Vs. Avon Cycles (P.) Ltd., against the Revenue. Following, the aforesaid decision, we answer the question in the negative.

7. In view of our answer to question No. (2), question No. 3 does not arise and is returned unanswered.

8. As regards question No. (4), in view of our answer to question No. (2), this question has become redundant and hence no answer is called for.

9. The matter stands disposed of with no order as to costs.