
(2004) 08 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Income Tax R. No. 45 of 1984

Commissioner of Income Tax

APPELLANT

Vs

Material Dress Engineering Foundry

RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:

Income Tax Act, 1961 — Section 35B, 35B(1)

Citation : (2005) 275 ITR 308

Hon'ble Judges : N.K. Sud, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : N.L. Sharda, for the Appellant; Sanjay Bansal, for the Respondent

Judgement

1. At the instance of the Revenue the Income Tax Appellate Tribunal, Amritsar (for short "the Tribunal"), has referred the following question of law arising out of its order dated October 28, 1983, relating to the assessment year 1979-80 for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in upholding the order of the Commissioner of Income Tax (Appeals) allowing weighted deduction u/s 35B of the Income Tax Act, 1961, on various items of expenditure on proportionate basis without specifically relating the expenditure to any of the sub-clauses of Section 35B(1) (b) of the Income Tax Act ?"

2. Mr. Sanjay Bansal, learned counsel for the assessee, has pointed out that the Tribunal has granted this relief on the basis of its earlier order in the assessee's own case for the assessment year 1976-77 which has since been upheld by this court in Commissioner of Income Tax Vs. F.C. Sondhi and Co. (India) Pvt. Ltd., .

3. Although this contention of learned counsel for the assessee is correct, yet it must be noticed that thereafter the Supreme Court in Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., and Commissioner of Income Tax (CNTL), Ludhiana Vs. Hero Cycles Pvt. Ltd., Ludhiana, has held that weighted

deduction u/s 35B of the Income Tax Act, 1961 (for short "the Act") can only be granted if the assessee is able to establish that the expenditure had been incurred wholly and exclusively in respect of the activities mentioned under various sub-clauses of Section 35B(1)(b) of the Act. We find that no such exercise had been undertaken either in the assessment year 1976-77 or in the year under consideration. In Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., the Supreme Court, at page 175 has observed as under :

"In order to get this deduction, the assessee will have to prove that the expenditure was incurred during the previous year wholly and exclusively for the purposes set out in Clause (b) of Section 35B(1). There cannot be any blanket allowance of the expenditure nor can there be any blanket disallowance. Every case has to be discussed specifically and the expenditure must be found to be of the nature mentioned in any one of the sub-clauses. If the expenditure does not fall in any of these categories, it cannot be allowed as a deduction. Some of the sub-clauses provide that if the expenditure is incurred in India, it cannot be allowed but in some of the sub-clauses this requirement is not there. In such cases, the expenditure may or may not be incurred in India. Every case will have to be examined in the light of the provisions of the sub-clauses and the facts proved by the assessee."

Similarly in Commissioner of Income Tax (CNTL), Ludhiana Vs. Hero Cycles Pvt. Ltd., Ludhiana, the apex court, at page 469, has observed as under :

"In this case a large number of questions were sought to be raised. We shall deal with only the question relating to Section 35B. It appears that the Tribunal was totally unmindful of the various sub-clauses of Section 35B(1)(b). Expenses can only be allowed if they are wholly and exclusively incurred for any of the purposes mentioned in these sub-clauses. The section is quite clear and categorical. There is no way that any other expenditure can be given weighted deduction. u/s 35B, it is the assessee's duty to prove facts which will bring the case within any of these sub-clauses. Unless that is done the assessee will not be entitled to get this deduction. The Tribunal has allowed the deduction without verifying or examining the sub-clauses under which this could be allowed."

5. The matter, therefore, needs to be decided afresh in the light of the law laid down by the apex court in Commissioner of Income Tax, Delhi Vs. Stepwell Industries Ltd. and etc. etc., and Commissioner of Income Tax (CNTL), Ludhiana Vs. Hero Cycles Pvt. Ltd., Ludhiana, .

6. Accordingly, we set aside the findings of the Tribunal on this issue and restore the matter to the Tribunal for fresh adjudication. It is made clear that while redeciding the matter, the assessee will be afforded sufficient opportunity to establish and justify its claim under various sub-clauses of Section 35B(1)(b) of the Act.

7. In view of the above observations, the question referred to us is answered in

the negative, i.e., against the assessee and in favour of the Revenue and the matter is remitted back to the Tribunal.