(2007) 04 DEL CK 0106

In the Delhi High Court

Case No : IT Reference No. 182 of 1984

Commissioner of Income Tax APPELLANT

Vs

Modi Pvt. Ltd. RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 32(1)(iv), 36, 37

Citation : (2007) 04 DEL CK 0106

Hon'ble Judges : Vidya Bhushan Gupta, J;Madan B. Lokur, J

Bench : Division Bench

Advocate : P.L. Bansal, for the Appellant; Santosh Kumar Aggarwal, for the Respondent

Judgement

1. In this reference u/s 256(1) of the income tax Act, 1961, the following four questions of law have been referred for our opinion:-

"1. Whether on the facts and in the circumstances of the case, the expenditure of Rs. 12,990 on lunches, dinners etc. given to the representatives of the foreign collaborators, customers and suppliers was an expenditure in the nature of entertainment and disallowable under the I.T. Act, 1961?

2. Whether the expenditure of Rs. 67,971 on the foreign tours in the year under consideration was allowable revenue expenditure u/s 37 of Act?

3. Whether on the facts and in the circumstances of the case, the assessee was entitled to initial depreciation u/s 32(1)(iv) of the I.T. Act, 1961 in respect of the building in which Samaj Kalyan was running a school?

4. Whether on the facts and in the circumstances of the case, the assessee is entitled to development rebate on items of plant and machinery costing less than Rs. 750 valued at Rs. 16,41,448 and laboratory equipment of the value of Rs. 9,688?

In so far as the first question is concerned, we fin that it is not as if only one lunch or dinner was hosted by the assessee. The assessee had hosted several lunches and dinners for representatives of foreign collaborators, customers and suppliers. Therefore, it cannot be said that the expenses incurred on these various lunches and dinners was lavish or was an expenditure in the nature of entertainment disallowable under Act.

We are of the opinion, on a perusal of the paper book, that the various lunches and dinners that were hosted by the assessee were in the ordinary course of the business. Under the circumstances, we answer the first question in the negative, against the revenue and in favour of the assessee.

2. The second question pertains to expenditure of Rs. 67,971 on foreign tours undertaken by the Director and other employees of the assessee.

3. The Income Tax Officer has come to the conclusion that the foreign tours were in connection with an expansion project of the business of the assessee. This has also been the view taken by the Appellate Assistant Commissioner. The Tribunal has also proceeded on the same basis. Consequently, we are also proceeding on the basis that the foreign tours undertaken by the representatives of the assessee were in connection with an expansion project.

4. Our attention has been drawn by learned counsel for the assessee to Veecumsees v. CIT [1996] 220 ITR 185 1 (SC) wherein the assessee ran a jewellery business and then expanded its business to cover exhibition of cinematographic films. The Supreme Court took the view that since the business was composite, the assessee was entitled to deduction in terms of section 36 of the income tax Act, 1961. In so far as the reference before us in concerned, the finding of facts is that the foreign tours were for the purpose of expansion of the assessee''s business. Therefore, it must be held that the expenditure was a revenue expenditure. Moreover, it can hardly be said that expenditure incurred on foreign tours is of an enduring nature.

5. Consequently, we answer the second question in the affirmative, against the revenue and in favour of the assessee.

6. In so far as the third question is concerned, we find that the tax effect of this hardly Rs. 8,000 or less. Accordingly, we return the reference unanswered in respect of this question.

7. In so far as the fourth question is concerned, the admitted position is that it is required to be decided in the affirmative, in favour of the assessee and against the revenue in view of the decision of this Court in CIT v. Modi Industries Ltd. [2001] 250 ITR 35 1 and of the Allahabad High Court in Commissioner of Income Tax Vs. Swadeshi Cotton Mills Co. Ltd., The reference is disposed of accordingly.