
(2014) 02 AHC CK 0146

In the Allahabad High Court

Case No : Income Tax Appeals Nos. 3 of 2011 and 356 of 2012

Commissioner of Income Tax

APPELLANT

Vs

Modi Xerox Ltd.

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Income Tax Act, 1961 — Section 154, 36(1)(vii), 36(2), 37(1), 37(4)

Citation : (2014) 365 ITR 200

Hon'ble Judges : Mahesh Chandra Tripathi, J; Ashok Bhushan, J

Bench : Division Bench

Advocate : B.J. Agarwal and R.K. Upadhyaya, Advocate for the Appellant; R.R. Agrawal, Piyush Agarwal and S. Agrawal, Advocate for the Respondent

Judgement

1. These two appeals involving common questions of law relating to the assessment years 1993-94 and 1994-95 have been heard together and are being decided by this common judgment. We have heard Sri R.K. Upadhyaya, learned counsel for the appellants and Sri Bhupesh Jain assisted by Sri Suyash Agarwal learned counsels for the assessee.

2. The questions of law on which both the appeals have been admitted are being similar. It is sufficient to refer to the questions of law as framed in Income Tax Appeal No. 3 of 2011 for deciding both the appeals.

3. The appeal has been admitted on the following questions of law:

"1. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal is legally justified in deleting the disallowance u/s 40A(2)(b) of the income tax Act amounting to Rs. 27,88,335 out of payment made to M/s. Modi Rubber Ltd. whereas the assessee failed to prove that the claim amount of expenditure was made for the purpose of business and was commercially expedient?

2. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in deleting the addition of Rs.

9,00,000 on account of rent paid by the assessee for hiring certain premises for its training centre which was in the nature of guest house in contravention of the provisions of section 37(4) read with section 37(5) of the income tax Act?

3. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in deleting the disallowance on account of the claim for discount amounting to Rs. 56,28,773 whereas the disallowance was made over and above 2 per cent discount allowed in the earlier years keeping in view the legitimate needs of the business?

4. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in confirming the order of the Commissioner of income tax (Appeals) deleting the addition of Rs. 9,20,827 on account of bad debts in the absence of any effort for the realisation of the amount in the light of the provisions contained in section 36(2) read with section 36(1)(vii) of the income tax Act without contemplation of subsequent realisation?

5. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in holding that the deduction u/s 80-I amounting to Rs. 15,36,77,258 is admissible to the assessee ignoring the fact that the assessee was engaged in manufacturing an item of office equipment mentioned at Sl. No. 22 of the Eleventh Schedule to the income tax Act read with the Explanation pertaining thereto?

6. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in holding that the assessee can claim deduction u/s 80-I on two profit making units, M/s. Xerographic undertaking and M/s. Toner, Developer, and Photo Receptor Unit, and ignoring the third unit, M/s. Service Trading and other which had suffered losses without considering the business of M/s. Modi Xerox Ltd. as a whole, in totality whereas the deduction u/s 80-I was not allowable to the assessee in view of the question of law mentioned at paragraph 6 above?

7. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in the Commissioner of income tax (Appeals)'s order allowing the claim of the company that it could claim deduction u/s 80HH on two profit making units, M/s. Xerographic undertaking and M/s. Toner, Developer, and Photo Receptor Unit, and ignoring the third unit, M/s. Service Trading and other which had suffered losses yet constituted a unit for the business of the assessee as a whole, in totality and without appreciating the provisions of section 80AB and section 80B(5) of the income tax Act?

8. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in deleting the addition of Rs. 65,857 on account of club membership subscription even though there is no material on record to substantiate that the expenditure is commercially expedient for the purpose of business of the assessee as required by the provisions of section 37(1) of the income tax Act?

9. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in confirming the order of the Commissioner of income tax (Appeals) allowing the assessee's claim of lease rentals/charges of Rs. 1,09,29,470 even though the xerox machine and equipment had not passed on the lessors being purchaser of the same goods from the assessee-company for certain period and the lease charges were not directly connected with the user of the goods?

10. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in declining to interfere on the issue of the addition of Rs. 15,00,000 made on account of expenses incurred on maintenance of guest house not shown in the books of account?

11. Whether, on the facts and in the circumstances of the case, the learned income tax Appellate Tribunal was legally justified in holding that the deduction u/s 80HH is to be allowed on total income including the profit from sale of scrap being part of income of the industrial undertaking?"

4. Learned counsel for the appellants as well as the learned counsel for the assessee are at an agreement that the above questions except questions Nos. 10 and 11 are covered by one or other judgment of this court. It is useful to refer to the details of the judgment, which covers questions Nos. 1 to 9.

Question No. 1: The question is answered in favour of the assessee in its own case in Income Tax Appeal No. 30 of 2001 Commissioner of Income Tax and Another Vs. Modi Xerox Ltd. decided, vide judgment and order dated April 15, 2010. We have perused the judgment of a Division Bench of this court in Income Tax Appeal No. 30 of 2001. Following the said judgment, the question is answered in favour of the assessee.

Question No. 2: The said question is covered by the judgment of this court in Income Tax Appeal No. 225 of 1999 Commissioner of Income Tax and Another Vs. Modi Xerox Limited (No. 1), against the assessee and in favour of the Revenue. The said judgment in Commissioner of Income Tax and Another Vs. Modi Xerox Ltd. has been subsequently followed in Income Tax Appeal No. 30 of 2001. Question No. 2, is thus answered in favour of the Revenue and against the assessee.

Question No. 3: Learned counsel for the assessee has submitted that similar issue was restored to the file of the Assessing Officer by the High Court for the assessment in 1996-97 for verification. Following the judgment of this court in the case of CIT v. Modi Xerox Ltd. in Income Tax Appeal No. 42 of 2002, the issue is restored to the file of the Assessing Officer for verification.

Question No. 4: The issue is covered in favour of the assessee by the judgment in its own case in Income Tax Appeal No. 31 of 2001. We have perused the judgment of this court in Income Tax Appeal No. 31 of 2001 (CIT v. Modi Xerox Ltd.) decided on April 15, 2010. Following the said judgment, the question is

answered in favour of the assessee and against the Revenue.

Questions Nos. 5, 6 and 7: The above three issues are covered in favour of the assessee in its own case, i.e., Income Tax Appeal No. 30 of 2001 Commissioner of Income Tax and Another Vs. Modi Xerox Ltd. We have gone through the judgment of the Division Bench of this court in Income Tax Appeal No. 30 of 2001 and following the said judgment all the above three issues are answered in favour of the assessee and against the Revenue.

Question No. 8: The issue has already been decided in favour of the assessee in its own case in Income Tax Appeal No. 31 of 2001 Commissioner of Income Tax and Another Vs. Modi Xerox Limited (No. 1), where the High Court has followed its earlier judgment in Income Tax Appeal No. 225 of 1999. Following the aforesaid judgment, the issue is answered in favour of the assessee and against the Revenue.

Question No. 9: This question is covered in favour of the respondent-assessee in its own case in Income Tax Appeal No. 31 of 2001 where the High Court has followed its earlier judgment in Income Tax Appeal No. 244 of 1999. Following the said judgment, the issue is answered in favour of the assessee.

Question No. 10: The brief facts for answering the above question No. 10 now needs to be noted. The Assessing Officer while finalising the assessment for the year 1993-94 made addition under the heading "guest house expenses" estimated as the expenses on maintenance of guest house as Rs. 15 lakhs. The assessee filed the appeal and the appellate authority deleted the aforesaid addition observing that there is nothing to indicate that the assessee has incurred the expenditure of Rs. 15 lakhs on maintenance of guest house. Against the order of the Commissioner of income tax (Appeals), both the Department and the assessee had filed appeal before the Tribunal. The Tribunal confirmed the said order against which this appeal has been filed.

5. Sri R.K. Upadhyaya, learned counsel for the appellant, submitted that the guest house was being run as training centre by the assessee which naturally involved expenditure at the hand of the assessee and the Assessing Officer has rightly estimated the expenses of Rs. 15 lakhs. He further submits that as per the provisions of section 37(4), as it was in operation at the relevant time, no allowance was permissible in respect of any expenditure incurred by the assessee on the maintenance of any residential accommodation in the nature of guest house. He submits that the Assessing Officer was fully justified in making the addition of Rs. 15 lakhs. Sri Jain, learned counsel appearing for the assessee, refuting the submission contended that it is on record that the assessee was paying rent of Rs. 9 lakhs to the entity who was owning the building, i.e., silver stone and no other expenditure was incurred by the assessee towards guest house/training centre. He submits that the Assessing Officer has not referred to any material and the addition was purely based on surmises and conjectures. He submits that the Commissioner of income tax (Appeals) has rightly deleted the

said addition. He submits that the Assessing Officer has already referred to the expenditure towards entertainment which has already been included in the assessment order and entertainment expenses of Rs. 56,28,733 has already been included.

6. We have considered the submissions and perused the record. The Assessing Officer, while making the addition of Rs. 15 lakhs as estimated expenses for guest house has not referred to any expenditure or any material for estimating the expenditure of Rs. 15 lakhs. The assessee's case throughout was that he had not incurred any expenditure apart from paying rent of Rs. 9 lakhs. The Commissioner of income tax (Appeals) has allowed the appeal of the assessee and noted the submission of the assessee and recorded its finding in paragraph 13.1 and 13.2 which are quoted as below:

"13.1 The learned counsel for the appellant submitted as under:

"In response to the Assessing Officer's query regarding the guest house expenses the appellant had clarified that no guest house was maintained by the appellant during the relevant previous years.

The Assessing Officer alleged that the training centre of the appellant was in fact being used for the purposes of personal use and entertainment of the appellant's directors and their family members and made an estimated and ad hoc disallowance of Rs. 15,00,000 on account of maintenance of the guest house.

It is respectfully submitted that such ad hoc disallowance on conjectures and surmises is entirely unsustainable in law and on facts. The premises in which the training centre is run is owned by M/s. Silvertone India Ltd. The appellant pays to that company only Rs. 9,00,000 as rent for the premises. No other payment is made by the appellant for the said premises to that company. This expenditure of Rs. 9,00,000 has already been disallowed by the Assessing Officer, again on suspicious and surmises, as guest house expenses.

In this background, making a further addition of Rs. 15,00,000 where no such expenditure was incurred or claimed by the appellant is, in our respectful submission, wholly arbitrary and, hence, calls for being deleted."

13.2: "I find that the addition made by the Assessing Officer is on presumption and there is nothing to indicate that the appellant incurred an expenditure of Rs. 15,00,000 on maintenance of guest house. Even in respect of alleged training centre only expenses claimed were Rs. 9,00,000, i.e., rent for the premises. This finds support from the auditor's report at page 346 of the paper book. I, therefore; see no reason to sustain this addition. The addition is, therefore, deleted."

7. The Tribunal has also affirmed the findings of the Commissioner of income tax (Appeals). The appellate authority came to the finding of fact that there is no material to indicate that any other expenses have been incurred by the assessee apart from paying the rent. The said findings are finding of fact. The Assessing

Officer has also not referred to any kind of expenditure incurred by the assessee other than paying rent of Rs. 9 lakhs.

8. We do not find any error in the order of the Commissioner of income tax (Appeals) allowing the appeal and the order affirming the said finding. Question No. 10, is thus answered in favour of the assessee and against the Revenue.

9. Now we come to question No. 11 which relate to deduction u/s 80HH before the Assessing Officer. u/s 80HH, the assessee was entitled to the deduction equal to 20 per cent of the gross total income of the assessee, which includes any profit and gains derived from the industrial undertaking. The assessee's case is that income of Rs. 63,66,932 was deducted treating to be income from other sources and deduction u/s 80HH was not given on the aforesaid amount of Rs. 63,66,932. The assessee filed an appeal against the said order and the appellate authority in paragraph 6.2 directed the Assessing Officer to take the income from the sale of scrap by xerographic equipment unit and toner, developer, photocopier unit as profit of the said unit. The said order has been confirmed by the Tribunal.

10. Learned counsel for the appellant submitted that the Assessing Officer has rightly not deducted the said income from the profits and gain from the industrial unit, since the said income from the scrap could not be said to be income derived from the industrial undertaking. He submits that the words "derived from" in section 80HH has to be understood as something which has direct and immediate nexus with the assessee's industrial undertaking.

11. Learned counsel for the assessee refuting the submission of the appellant submitted that the scrap was generated from the manufacturing process itself by different units of the assessee's undertaking, hence, the Commissioner of income tax (Appeals) has rightly taken the said income which was from the sale of scrap as income derived from industrial undertaking.

12. Learned counsel for the assessee has placed reliance on three judgments reported in The Commissioner of Income Tax Vs. Sadhu Forging Ltd., Commissioner of Income Tax, Tamil Nadu-III Vs. Wheels India Ltd., and Deputy Commissioner of Income Tax Vs. Harjivandas Juthabhai Zaveri, Section 80HH contemplates deduction on profits and gains derived from the industrial undertaking. The issue is as to whether the income of Rs. 63,66,932 can be said to be income derived from the industrial undertaking or not? The assessee's submission in the above regard has been noted by the Commissioner of income tax (Appeals) and the Commissioner of income tax (Appeals) has directed the Assessing Officer to take income from the sale of scrap by xerographic equipment unit and toner, developer, photocopier unit as profit of the said unit. The submission of the assessee was that the said scrap which is sold and income of Rs. 63 lakhs and odd was generated in the manufacturing process itself. It is useful to refer to paragraph 6.2 which is to the following effect:

"6.2: During this year the only new issue involved is that the Assessing Officer

has while working out the deduction u/s 80HH reduced the income from other sources from the net reasonable income to the extent of Rs. 83,66,932 (as per order u/s 154). In the original order it was taken at Rs. 63,66,932.

The statement of profitability of different units filed by the appellant shows the other income at Rs. 83,66,932 (refer page 1 of the paper book). The Assessing Officer has deducted this income while working out the relief allowable u/s 80HH. The learned counsel for the appellant has submitted that the sum of Rs. 83,66,932 represented sale of scrap and sale of scrap was business income of the different units of the appellant. This was, therefore, to be taken as profit of the industrial undertaking and the same should not have been reduced from the net assessable income adopted by the Assessing Officer for the purpose of section 80HH. Reliance was placed on the decision of the Madras High Court in the case of Commissioner of Income Tax, Tamil Nadu-III Vs. Wheels India Ltd., to the effect that the sale of scrap was as income of the priority industry and, hence, relief u/s 80-I was available in respect of these units.

After considering the submissions of the appellant, I direct the Assessing Officer to take the income from sale of scrap by xerographic equipment unit and toner, developer, photocopier unit as profit of the said units (and not income from other sources) for purpose of deduction u/s 80HH. However, as I have held in the case of the appellant in previous assessment year that the income/profit derived by the appellant by service and trading unit does not constitute income from industrial undertaking other income of Rs. 29,28,427 (out of claim of Rs. 83,66,932) concerning this unit has to be reduced from the abovesaid net assessable income taken by the Assessing Officer."

13. The Commissioner of income tax (Appeals) has clearly directed for including the income from the scrap generated by specified units as noted above. The scrap generated from the above units has to be treated as scrap derived from the industrial undertaking and any income from the sale of the said scrap has to be included for the purpose of benefit of section 80HH. The Hon"ble apex court in Pandian Chemicals Ltd. Vs. Commissioner of Income Tax, have occasion to consider the words "derived from" as used in section 80HH. The said case was of interest earned on the deposit made with the electricity board for supply of electricity. Following was laid down by the hon"ble apex court in paragraphs 4, 5 and 6 (page 280):

"Section 80HH of the income tax Act grants deduction in respect of profits and gains "derived from" an industrial undertaking. The contention of the appellant before us is that interest earned on the deposit made with the electricity board for the supply of electricity to the appellant"s industrial undertaking should be treated as income derived from the industrial undertaking within the meaning of section 80HH. It is submitted that without the supply of electricity the industrial undertaking could not run and since electricity was an essential requirement of the industrial undertaking the industrial undertaking could not survive without it. It is further pointed out that for the purpose of getting this essential input, the

statutory requirement was that the deposit must be made as a pre-condition for the supply of electricity. Consequently, according to the appellant, the interest on the deposit should be treated as income derived from the industrial undertaking within the meaning of section 80HH.

The High Court rejected the submission of the appellant by relying upon the decision of this court in *Cambay Electric Supply Industrial Co. Ltd. Vs. The Commissioner of Income Tax, Gujarat-II, Ahmedabad*, where this court had clearly stated that the expression "derived from" had a narrower connotation than the expression "attributable to" (page 93):

"In this connection, it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression "derived from", as, for instance, in section 80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

The word "derived" has been construed as far back in 1948 by the Privy Council in (1948) 16 ITR 325 (Privy Council) when it said (page 328):

"The word "derived" is not a term of art. Its use in the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition.""

14. The proposition laid down by the hon"ble apex court that the said case was to the effect that the word "derived" from u/s 80HH has to be understood as something which has immediate nexus with the industrial undertaking. In the present case, the scrap generated from the aforesaid three units has direct and immediate nexus with the industrial undertaking since the said scrap has been generated from the manufacturing process itself. Thus, we are of the view that the Commissioner as well as the Tribunal has committed no error in allowing the benefit of section 80HH to the assessee on the aforesaid income of Rs. 63 lakhs and odd. However, as directed by the Commissioner of income tax (Appeals) in paragraph 6.1, the Assessing Officer has to pass a consequential order to carry out the directions of the appellate authority.

15. In view of the above, question No. 11 is answered in favour of the assessee and against the Revenue. Both the appeals are disposed of accordingly.