
(1994) 09 DEL CK 0042
In the Delhi High Court
Case No : I. T. C. No. 197 of 1992

Commissioner of Income Tax	Vs	APPELLANT
Modipon Ltd. (No. 1)		RESPONDENT

Date of Decision : 22-09-1994

Acts Referred:

Citation : (1995) 212 ITR 420 : (1995) 78 TAXMAN 35

Hon'ble Judges : Y.K. Sabharwal, J;D.K. Jain, J

Bench : Division Bench

Advocate : B. Gupta, for the Appellant; S.K. Aggarwal, for the Respondent

Judgement

D. K. Jain, J.—By this petition u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), the Revenue seeks a direction to the Income Tax Appellate Tribunal (for short "the Tribunal") to state a case and refer the following questions, said to be questions of law and arising out of ITA No. 3317/Del/85, pertaining to the assessment year 1977-78 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in confirming the deletion by the Commissioner of Income Tax (Appeals) of the disallowance of Rs. 2,47,463 relating to interest claimed by the assessee on borrowed money utilised in granting interest-free advances ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in deleting the disallowance of Rs. 7,200 being the retainer ship fee paid to Dr. Mithu Kothari and further allowing the entire expenses incurred on the car provided to her ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that a sum of Rs. 24,000 does not fall u/s 80VV but is allowable u/s 37(1) of the Income Tax Act ?

4. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in holding that the provisions of rule 6D do

not apply to a foreign technician who is not an employee ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in confirming the order of the Commissioner of Income Tax (Appeals) allowing relief of Rs. 1,64,049 on the ground that the receipts on account of charity collections do not constitute trading receipts ?

6. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that presentations worth Rs. 52,273 were allowable ?

7. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the Commissioner of Income Tax (Appeals) had correctly deleted disallowance of Rs. 14,76,370 made u/s 40A(1) regarding commission paid to Indo Euro Chemical Services (P) Ltd. ?

8. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in allowing relief u/s 80J in respect of Unit B ?

9. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the computation of depreciation should be revised in accordance with appeal orders of earlier years which have not been accepted by the Department ?"

2. We have heard learned counsel for the parties.

3. As regards question No. 1, it is not disputed by learned counsel for the assessed that in respect of the assessment year 1976-77 reference on a similar question has already been called by the Allahabad High Court in the case of the assessed itself. In this view of the matter, we are of the opinion that reference on the proposed question has to be called.

4. With regard to questions Nos. 2, 3, 7, 8 and 9, it is not disputed by Mr. Gupta, learned counsel for the Revenue, that in the case of the assessed itself reference of similar questions in respect of earlier assessment years has been declined by the Allahabad High Court in Commissioner of Income Tax Vs. Modipon Limited (No. 1), and COMMISSIONER OF Income Tax Vs. MODIPON LIMITED., . Having regard to these decisions, in our opinion, the proposed questions are not stable questions of law.

5. Coming to question No. 4, it is submitted by learned counsel for the Revenue that although in respect of the assessment year 1976-77, the Allahabad High Court in Commissioner of Income Tax Vs. Modipon Limited (No. 1), , has declined to call for reference on a similar question, the said decision needs reconsideration because in the said decision the court has not correctly interpreted rule 6D(2) of the Income Tax Rules, 1962. The contention is that the expression "or any other person" appearing in the said Rules indicates that rule 6D(2) applies even to those persons who may not be the employees of the assessed, and, Therefore, even though foreign technicians may not be

employees of the assessed, yet expenditure incurred in connection with their traveling has to be restricted in accordance with the said Rules. In our opinion, there is no merit in the contention. We are in respectful agreement with the view expressed in the aforementioned decision of the Allahabad High Court that the said Rules do not apply to a foreign technician who is not an employee of the assessed. Thus, the question proposed is not fit for reference.

6. In so far as question No. 5 is concerned, the controversy involved therein was as to whether the amount collected by the assessed as charity at Re. 1 per carton of yarn sold could be treated as its trading receipt. While accepting the assessed's viewpoint that it could not be treated as a trading receipt, the Tribunal has merely relied on its earlier order pertaining to the assessment year 1974-75. Although it is not denied by learned counsel for the Revenue that in respect of the assessment year 1976-77 reference of a similar question has been declined by the Allahabad High Court in the case of the assessed itself (COMMISSIONER OF Income Tax Vs. MODIPON LIMITED., , what is sought to be contended is that in view of certain observations in a recent decision of the Supreme Court in COMMISSIONER OF Income Tax Vs. AMRITSAR TRANSPORT CO. P. LTD. (C. A. NOS. 2456 OF 1978, 3522 OF 1979, 1368 OF 1982, 5987 AND 5988 OF 1990 AND 1558 OF 1993). COMMISSIONER OF Income Tax v. CHADDHA GOODS TRANSPORT CO. P. LTD. (C. A. NOS. 1549 TO 1557 OF 1993)., , a question of law does arise from the order of the Tribunal. Learned counsel has urged that these observations also indicate that the Supreme Court has doubted the correctness of its earlier decision in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., .

7. We have gone through the judgment of the Supreme Court in COMMISSIONER OF Income Tax Vs. AMRITSAR TRANSPORT CO. P. LTD. (C. A. NOS. 2456 OF 1978, 3522 OF 1979, 1368 OF 1982, 5987 AND 5988 OF 1990 AND 1558 OF 1993). COMMISSIONER OF Income Tax v. CHADDHA GOODS TRANSPORT CO. P. LTD. (C. A. NOS. 1549 TO 1557 OF 1993)., and we are unable to agree with learned counsel for the Revenue that the correctness of the decision in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., has been doubted in any way. While dealing with the facts in that case, the Supreme Court observed as under (at page 819) :

"So far as inclusion of amounts collected as Dharmada which are kept in a separate account and are utilised for charitable purposes is concerned, there can be no dispute that the are not liable to be included in the income of the assessed, vide Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., , but the Revenue's case herein is that, though collected in the name of Dharmada, these amounts were neither meant for any charitable purposes nor were they spent on charitable purposes. In support of the same, they rely upon the aforesaid written reply of the respondent-assessed itself."

8. It is evident from the above paragraph that in fact the Supreme Court has reaffirmed the view taken in Commissioner of Income Tax (Central), New Delhi

Vs. Bijli Cotton Mills (P.) Ltd., . In the instant case, it was never the stand of the Revenue that the amounts so collected by the assessed were neither meant for any charitable purpose nor were they spent on charity. In our opinion, the ratio of the decision in Amritsar Transport Company's case is not applicable to the facts in hand. Having regard to the decision of the Supreme Court in Commissioner of Income Tax (Central), New Delhi Vs. Bijli Cotton Mills (P.) Ltd., and the Allahabad High Court in the case of the assessed itself, we decline to call for a reference on the proposed question.

9. With regard to question No. 6 it has been pointed out by learned counsel for the assessed that for the assessment years 1975-76 and 1976-77 no reference was sought by the Revenue of a similar question. Besides, it is also stated at the Bar that for the assessment year 1979-80, the Assessing Officer has himself allowed similar expenditure. In that view of the matter, the proposed question is not fit for reference.

10. Consequently, we direct the Tribunal to refer question No. 1 along with an appropriate statement of case for the opinion of this court. There will, however, be no order as to costs.