(1994) 11 DEL CK 0056

In the Delhi High Court

Case No : IT Case No. 141 of 1992

Commissioner of Income Tax APPELLANT

Vs

Modipon Ltd. RESPONDENT

Date of Decision : 10-11-1994

Acts Referred:
Income Tax Act, 1961 — Section 216, 256(1), 256(2), 37, 37(1)

Citation : (1995) 80 TAXMAN 228

Hon'ble Judges : K. Shivshankar Bhat, J;D.K. Jain, J

Bench : Division Bench

Advocate : B. Gupta and R.K. Chaufla, for the Appellant; Debi Pal and S.K. Aggarwal, for the Respondent

Judgement

D.K. Jain, J.—By this application u/s 256(2) of the income tax Act, 1961 (''the Act''), the revenue seeks a direction to the Tribunal to state a case and refer the following questions, stated to be questions of law, arising out of IT Appeal No. 3274 of 1985, pertaining to the assessment year 1979-80: " 1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that:

(a) the amount of Rs. 1,690 being personal accident insurance premium in respect of the Managing Directors was not a perquisite for the purposes of section 40(c) of the Act?

(b) the amount of Rs. 2,194 being the Club membership subscription paid for the Managing Directors was not a perquisite for the purpose of section 40(c) of the Act. The department''s stand is supported by the decision of the Hon''ble Delhi High Court in the case of Continental Construction Ltd. Vs. Commissioner of Income Tax,

2. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that 50 per cent of the expenses towards retainership fee, etc., should be considered u/s 80VV of the income tax Act and the balance

amount should be allowed u/s 37(1) of the Act, ignoring the fact that these items of expenditure were connected with proceedings before the income tax Authorities?

3. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that 25 per cent of the expenses in the nature of public relation, business promotion and boarding should be allowed as deduction towards the employees?

4. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that 25 per cent of the expenses incurred on providing meals, etc., to the employees outside the office, factory premises or other places of work should be allowed?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that Sterling Apartment Flat at Bombay, cottage at Marve Malad, Bombay and Jindal House at Calcutta, were not in the nature of guest house and further that the relevant claims of the assessee should be allowed?

6. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in allowing 2/3rds of the expenses in respect of staff transit house at Delhi towards official house?

7. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that disallowance of Rs. 1,60,217 under rule 6D was wrongly made. Further, whether the Tribunal was right in accepting the assessee''s contention that the disallowance under rule 6D had to be computed with regard to the aggregate of all journeys undertaken by an employee during the year and not with regard to each journey taken separately?

8. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in allowing the claim of the assessee for deduction of Rs. 97,279 being the actual expenditure incurred during the year by the Benefit Trusts?

9. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the amount of Rs. 51,18,039 pertaining to sales-tax liability is allowable?

10. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that interest of Rs. 3,195 levied u/s 216 of the income tax Act Was not leviable?"

While dealing with the revenue''s application u/s 256(1), the Tribunal has observed that insofar as question Nos. 1 to 8 and 10 are concerned, reference on similar questions was declined by it in the revenue''s similar application pertaining to the assessment year 1977-78. As regards question No. 9, it was of the view that since the issue raised is settled by the decision of this Court in Additional Commissioner of Income Tax, Delhi-II Vs. Rattan Chand Kapoor, and by the judgment of the Supreme Court in the case of The Kedarnath Jute Mfg. Co. Ltd. Vs. The Commissioner of Income Tax, (Central), Calcutta, , no referable question of law arose. Accordingly, the Tribunal declined to make reference on any of the questions proposed. Hence the present application. 2. We have heard Mr. B. Gupta for the revenue and Dr. Debi Pal for the assessee.

3. It is pointed out that in respect of the assessment year 1977-78, the revenue had filed a petition u/s 256(2) which/was the subject-matter of ITC No. 196 of 1992. This application was disposed of vide order dated 22-9-1994 and it is not disputed that reference on questions similar to question Nos. 1, 2, 3 and 4 was declined. Following the said order, we decline to call for reference on these questions in respect of the present year as well.

4. As regards question Nos. 5 and 6, we find that in ITC No. 196 of 1992, pertaining to the assessment year 1977-78, similar questions were proposed by the revenue but reference was called only in respect of the issue pertaining to the expenses incurred by the assessee on the maintenance of a flat in Sterling Apartments, Bombay. Reference on the question relating to expenses incurred on the maintenance of a cottage at Marve Malad, Bombay and Jindal House at Calcutta, was declined on the ground that right from the assessment years 1972-73 to 1976-77, the Tribunal had been consistently accepting the assessee''s viewpoint and in respect of all these years the revenue had either not sought reference on the issue or the same had been declined by the High Court.

5. As regards the expenses incurred on the maintenance of transit house at Maharani Bagh, New Delhi, reference was declined on the ground that finding recorded by the Tribunal to the effect that only 1/3rd portion of the building was being used as a guest house and hence expenses to that extent were disallowable and the remaining portion was used for official purposes was a pure finding of fact.

6. It is, however, contended by the learned counsel for the revenue that on account of insertion of sub-section (5) in section 37 by the Finance Act, 1983 with retrospective effect from 1-4-1979, there has been significant change in law and, therefore, the issue pertaining to the expenses incurred on the maintenance of transit house at Delhi, needs re-consideration and, thus, reference should be called on question No. 6.

7. We do not agree. The newly inserted sub-section (5) in section 37 merely clarifies that any accommodation maintained, hired, reserved or otherwise arranged by the assessee for the purpose of providing lodging or boarding and lodging to any person, on tour or visit to the place at which such accommodation is situated, is to be treated as an accommodation in the nature of a guest house within the meaning of sub-section (4) of the said section and no more. In the instant case, while dealing with the controversy involved in the question, the Tribunal has recorded a finding that 2/3rds portion of the building at New Delhi was used for office purposes and 1/3rd as guest house and has, accordingly,

appropriated and disallowed 1/3rd of expenses, as having been spent on the maintenance of a guest house. As already held in ITC No. 196 of 1992, this is a pure finding of fact, which is not in challenge. In this view of the matter, we are of the opinion that the insertion of sub-section (5) in section 37 is of no consequence insofar as the facts of the present case are concerned. Following the decision of this Court in respect of the assessment year 1977-78 we decline to call for reference on these questions in entirety and would require the Tribunal to refer the following question only, as was done in respect of the said earlier assessment year:

"Whether, the Tribunal was right in holding that the flat in Sterling Apartments, Bombay was not a guest house for purposes of section 37 of the Act?"

8. As regards question No. 7, we find that in respect of the assessment year 1977-78, a reference has been called on the issue. However, the question was reframed as under:

"Whether, the Tribunal was right in holding that disallowance under rule 6D of the Rules was to be calculated with reference to the total journeys undertaken in a year by an employee/director and not with reference to each journey?"

9. Following the said order, we would require the Tribunal to refer the aforesaid reframed question.

10. Coming to questions 8 and 10, we find that reference on similar questions has been called in respect of earlier years. We would, accordingly, require the Tribunal to refer these questions.

11. Insofar as question No. 9 is concerned, it is vehemently argued by the learned counsel for the revenue that in view of the decision of this Court in Commissioner of Income Tax Vs. Mohan Meakin Breweries Ltd., , wherein the Court after discussing the earlier decision of this Court in Rattan Chand Kapoor''s case (supra) and of the Supreme Court in Kedarnath Jute Mfg. Co. Ltd.''s case (supra) has been pleased to call for a reference on an issue, similar to the one raised in the question proposed. On the other hand, Dr. Debi Pal, the learned counsel for the assessee, has vehemently argued that in view of the judgment of the Supreme Court in Kedarnath Jute Mfg. Co. Ltd.''s case (supra), the issue raised in the question is no longer res integra and, therefore, reference should not be called. Though, prima facie, we find some weight in the contention of the learned counsel for the assessee but keeping in view the decision of this Court in Mohan Meakin Breweries Ltd.''s case (supra) and to maintain some consistency in orders, we are inclined to call for reference on the proposed question. Consequently, we would direct the Tribunal to state a case and refer question Nos. 5 and 7 (as reframed above) and 8 to 10 for the opinion of this Court.

No costs.

