(2009) 03 RAJ CK 0042

In the Rajasthan High Court

Commissioner of Income Tax APPELLANT

Vs

Multimetals Ltd. RESPONDENT

Date of Decision : 17-03-2009

Acts Referred:

Income Tax Act, 1961 — Section 256, 37

Citation : (2009) 183 TAXMAN 183

Hon'ble Judges : Deepak Verma, C.J;R.C. Gandhi, J

Bench : Division Bench

Judgement

1. In this reference u/s 256(1) of the Income Tax Act, 1961 for the assessment year 1984-85, the following questions of law have been referred to be answered by this Court:

1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the conveyance charges paid to employees do not fall within the ambit of Section 37(3A) of the Income Tax Act, 1961?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that payment made for consultation and seeking opinion of advocates does not come within the purview of Section 80VV of the Income Tax Act, 1961?

2. As far as question No. 1 is concerned, in absence of adequate and proper evidence available on record as to how the conveyance charges were paid to the employees and how does it differ with the conveyance allowance as is being paid to all the employees of the assessee-company, presently it is not possible to decide the issue.

3. Even though we have heard learned Counsel for the parties on the said question for substantial time but as mentioned hereinabove since there is no sufficient evidence bifurcating the allowance paid to the employees towards conveyance, we are unable to decide the question. Confronted with this situation, learned Counsel for the assessee suggested that it is desirable to restore the

matter to the file of Income Tax Appellate Tribunal so that after producing adequate evidence before the Tribunal the said question could be decided.

4. Learned Counsel appearing for the department even though opposed the said prayer but looking to the fact that in absence of proper evidence available on record the said question could not be decided. We have no choice to restore question No. 1 to the file of Income Tax Appellate Tribunal to decide it de novo on merits in accordance with law. Needless to say while doing so the assessee would be at liberty to produce evidence in support of the contention which has been canvassed before us and the revenue Board also be at liberty to lead evidence, if it is so desired and thereafter the question would be considered and decided again.

5. As regards question No. 2 is concerned, the same has been answered by series of judgments of different courts pronounced from time to time. The first one requires to be mentioned in Mcgax Ravindra Laboratories (India) Ltd. Vs. Commissioner of Income Tax, passed by Division Bench of the High Court of Gujarat holding as under:

Deduction u/s 80VV - Scope - Provisions of Section 80VV are applicable to expenditure incurred in connection with any Income Tax proceedings before any Income Tax authority, Tribunal or any Court - Therefore expenditure incurred in connection with surtax assessment is not covered - Similarly, fee paid for matters other than proceedings for determination of any liability under Income Tax Act is not hit by provisions of Section 80VV -Hence, no disallowance could be made.

6. Similar view has been taken by Calcutta High Court in the matter of Commissioner of Income Tax Vs. Hayward Waldia Refinery Ltd., and Commissioner of Income Tax Vs. United Commercial Bank Ltd., . In the matter of United Commercial Bank Ltd. ''s case (supra), Calcutta High Court has held as under:

A perusal of Section 80VV of the Income Tax Act, 1961, makes it clear that expenditure in connection with the proceedings before the Income Tax authority or the Appellate Tribunal or any Court relating to the determination of any liability under the Income Tax Act, by way of tax, penalty or interest, may be allowed, but such deduction shall not, in any case, exceed in the aggregate five thousand rupees. Expenditure incurred in connection with travel and in preparation of the return and for obtaining legal advice cannot be held to be expenditure in connection with the appearance before an Income Tax authority, the Tribunal or Court, in connection with the determination of the liability under the Act by way of tax, penalty or interest and cannot be disallowed u/s 80VV of the Income Tax Act, 1961.

The assessee claimed deduction of expenses of Rs. 15,100 which included professional charges for preparation of return amounting to Rs. 5,000 and travelling expenses of Rs. 4,100 and fees for Income Tax appeals aggregating to

Rs. 15,000. The Income Tax Officer did not allow the expenses. The Commissioner of Income Tax (Appeals) allowed Rs. 5,000 u/s 80VV. The Tribunal held that the assessee was entitled to the deduction of Rs. 5,000 incurred in connection with the advice taken from various consultants. The same was the position with regard to the travelling expenses of consultants who came from Bombay to Calcutta in connection with these matters. The expenses for appearing before the Income Tax authorities amounted to Rs. 6,000. The Tribunal restricted the disallowance to Rs. 1,000. On a reference:

Held, that the expenditure incurred in the preparation of the return and the travel expenses did not come within the purview of Section 80VV and, accordingly, it was rightly allowed by the Tribunal. Only Rs. 6,000 was incurred by the assessee, as found by the Tribunal, being the fees of the Income Tax lawyer in connection with appearance before the appellate authorities or the Tribunal. Accordingly, the Tribunal rightly restricted the disallowance to Rs. 1,000 and allowed Rs. 5,000 u/s 80VV.

7. In the light of the aforesaid decision, we have no hesitation to hold that question No. 2 has to be answered in favour of the assessee and against the revenue.

The reference is accordingly dispose of.

