(2001) 01 AHC CK 0122

In the Allahabad High Court

Case No : Income-tax Application No. 71 of 1999

Commissioner of Income Tax APPELLANT

Vs

Willard India Ltd. RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 256(2), 37(2A), 40A(3), 40A(5)
Income Tax Rules, 1962 — Rule 3C, 6DD

Citation : (2001) 249 ITR 779

Hon'ble Judges : Sudhir Narain, J;Onkareshwar Bhatt, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant;

Final Decision : Disposed Of

Judgement

1. This is an application u/s 256(2) of the Income Tax Act, 1961, filed on behalf of the Department to direct the Income Tax Appellate Tribunal to draw up a statement of case and refer the following questions of law :

"(1) Whether, on the facts and in the circumstances of the case, there was any material before the learned Income Tax Appellate Tribunal in law to delete the addition of Rs. 97,824 towards entertainment expenditure u/s 37(2A) of the Income Tax Act ?

(2) Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally correct in deleting the additions of Rs. 1,39,658 made by the Assessing Officer u/s 40A(5) of the Income Tax Act and holding that the disallowance should be worked out in view of Rule 3C(ii) of the Income Tax Rules, 1962 ?

(3) Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally correct in deleting the addition of Rs. 3,67,872 made by the Assessing Officer towards claim of bonus pertaining to previous accounting year as a result of change in the method of accounting in

respect of bonus from cash system in the assessment year 1984-85 to mercantile system in the assessment year 1985-86 in view of the decision of the Supreme Court in the case of CIT v. British Paints India Ltd. : [1991]188ITR44(SC) ?

(4) Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal was legally correct in holding that the expenditure of Rs. 4,32,730 disallowed by the Assessing Officer u/s 40A(3) of the Income Tax Act was admissible being covered under exceptional circumstances as laid down under Rule 3C(ii) of the Income Tax Rules ?"

2. The assessee is a public limited company and manufacturer of jute bags and automobile batteries. The assessment proceedings were taken for the year 1985-86. The assessee claimed certain deductions, which were allowed by the Tribunal. The Department filed an application u/s 256(1) of the Act for referring the questions of law framed above. The Tribunal has already referred questions Nos. 2 and 3 to this court vide order dated February 4, 1998. It is not necessary in these circumstances to ask the Tribunal to refer those questions.

3. We have heard Sri A. N. Mahajan, learned counsel for the applicant. Learned counsel for the applicant pressed questions Nos. 1 and 4 referred to above. As regards question No. 1 it is contended that the Tribunal has allowed 50 per cent, expenditure considering the provisions u/s 37(2A) of the Income Tax Act. The Tribunal has allowed it only on the ground that for earlier years 50 per cent, allowance was given for such expenditure. He neither refers to the provision of Section 37(2A) of the Act nor considers the material in this respect. The Tribunal is directed to draw up a statement of the case in respect of question No. 1, referred to above. As regards question No. 4 learned counsel for the applicant urged that the amount was not paid either by cheque or by bank draft so the expenditure should be disallowed keeping in view Section 40A(3) of the Income Tax Act.

4. This court interpreted this provision in Commissioner of Income Tax Vs. Kohli Khan Bhandar, and held that the assessing authority has to consider the facts-and circumstances before applying the provisions of Section 40A(3) of the Income Tax Act.

5. On the facts and circumstances of the present case, the Tribunal has held that Section 40A(3) of the Income Tax Act the expenditure is allowed and there is no violation of Section 40A(3) of the Income Tax Act. In the facts and circumstances of the case question No. 4 does not arise out of the order of the Tribunal-

6. The application is partly allowed in respect of the question No. 1 only. The application is accordingly disposed of.