(2002) 10 GUJ CK 0002

In the Gujarat High Court

Case No : IT Reference No. 20 of 1988 24 October 2002 & Income Tax R. No. 20 of 1988

Dinesh Mills Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 24-10-2002

Acts Referred:
Income Tax Act, 1961 — Section 37, 40

Citation : (2004) 268 ITR 502

Hon'ble Judges : D.A. Mehta, J;Anil R. Dave, J

Bench : Division Bench

Advocate : J.P. Shah, for the Appellant; Manish R. Bhatt, for the Respondent

Judgement

A.R. Dave, J.—At the instance of the assessee, the following questions arising out of the order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench "B", have been referred to this court for its opinion under the provisions of Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. At the instance of the assessee :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in considering the commission paid to the managing director as the perquisite for the purpose of Section 40(c) of the Act ?

(2) Whether, on the facts and in the circumstances of the case, legal and professional expenses of Rs. 22,518 in respect of amalgamation of the sister concern with the assessee-company is allowable revenue expenditure or capital expenditure ?"

3. Mr. J. P. Shah, learned advocate, has appeared for the assessee and Mr. M. R. Bhatt, learned standing counsel has appeared for the Revenue.

4. Learned counsel have submitted that the questions which have been referred to this court have already been answered by this court or by the apex court.

5. So far as question No. 1 which has been referred at the instance of the assessee is concerned, it has been submitted that the said question has already been answered against the assessee in the case of Commissioner of Income Tax Vs. Rohit Mills Ltd., . Looking to the law laid down by this court in the aforesaid judgment, we answer the said question in the affirmative, i.e., against the assessee and in favour of the Revenue.

6. So far as question No. 2 is concerned, looking to the law laid down by the apex court in the case of COMMISSIONER OF INCOME TAX Vs. BOMBAY DYEING and MANUFACTURING CO. LTD., , we answer the question in favour of the assessee and against the Revenue, i.e., the legal and professional expenses in respect of amalgamation are allowable as revenue expenditure.

7. The following questions have been referred to this court at the instance of the Revenue :

At the instance of the Revenue.

"(1) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has not erred in law in holding that a sum of Rs. 20,000 out of motor car expenses is not disallowable as personal and non-business use of motor car in the hands of the assessee ?

(2) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the assessee is entitled to the depreciation as claimed and 1/7th portion of the depreciation of motor car is not disallowable ?"

8. So far as the questions which have been referred at the instance of the Revenue are concerned, it has been submitted by the learned advocate that looking to the law laid down in the case of Sayaji Iron and Engg. Co. Vs. Commissioner of Income Tax, by this court, the aforesaid questions are required to be decided in favour of the assessee and, therefore, the said questions are also decided in favour of the assessee and against the Revenue.

9. The reference stands disposed of accordingly with no order as to costs.