(2008) 09 P&H CK 0190

In the Punjab And Haryana At Chandigarh

HMM Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 30-09-2008

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 40(c)

Citation : (2009) 313 ITR 401

Hon'ble Judges : Ajay Tewari, J;Adarsh Kumar Goel, J

Bench : Division Bench

Judgement

1. The Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh Bench has referred the following questions of law for the opinion of this Court u/s 256(1) of the Income Tax Act, 1961 (in short, "the Act"), for the assessment years 1978-79 and 1979-80 arising out of its order dated January 31, 1985, in I.T.A. Nos. 737/Chandi/82, 271/Chandi/83 and 275/Chandi/83:

I.T.A. No. 275/Chandi/83 (by the Revenue)

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the medical expenses by way of payment of premium towards group medical insurance scheme and reimbursement of medical expenses, electricity, water and gas charges shall not be treated as perquisite while computing disallowance u/s 40(c)/40A(5) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the provisions of Clause (c) of Sub-section (5) of Section 40A shall not apply for restricting the allowance in respect of salary and perquisite paid by the assessee to its employees ?

3. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the roads constructed within the factory premises constituted plant and qualified for the grant of investment allowance u/s 32A of the Income Tax Act, 1961 ?

I.T.A. No. 737/Chandi/82 (by the assessee)

1. Whether the Income Tax Appellate Tribunal has been right in law in holding that the assessee was not entitled to deduction of surtax payable by it in pursuance of the Companies (Profits) Surtax Act, 1964, in arriving at the taxable income ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the no weighted deduction u/s 35B is available in respect of freight expenses of Rs. 5,25,548, octroi duty of Rs. 2,972, bank charges of Rs. 427, trunk call charges of Rs. 3,439 and insurance charges Rs. 53,161?

I.T.A. No. 271/Chandi/83 (by the assessee)

1. Whether, the Income Tax Appellate Tribunal has been right in law in holding that the assessee was not entitled to deduction of surtax payable by it in pursuance of the Companies (Profits) Surtax Act, 1964, in arriving at the taxable income?

2. The assessee claimed deduction in respect of medical expenses by way of payment of premium towards group medical insurance scheme and reimbursement of medical expenses, electricity, water and gas charges. The claim was disallowed by the Assessing Officer by treating the same as perquisite u/s 40(c)/40A(5) of the Act. The Commissioner of Income Tax (Appeals) allowed the claim of the assessee which was affirmed by the Tribunal. The assessee also made a claim u/s 32A in respect of the amount spent for construction of roads within the factory premises by claiming the said expenditure the part of investment on plant for the purpose of investment allowance u/s 32A of the Act, which claim was disallowed by the Assessing Officer but was allowed by the Commissioner of Income Tax (Appeals) and affirmed by the Tribunal.

Re : Q. No. (1) (by the Revenue)

3. Learned Counsel for the assessee relies on the judgment of the hon''ble Supreme Court in Commissioner of Income Tax, Bombay, etc. Vs. M/s. Mafatlal Gangabhai and Co. (P) Ltd., , particularly in paragraphs 12 to 14 (of the SCC), holding that cash payments made to the assessee were not covered by the expression "expenditure" u/s 40A(5) or u/s 40(c) of the Act.

4. Following the above judgment, this Court in H.M.M. Ltd. Vs. Commissioner of Income Tax, , in the case of the assessee for the assessment year 1977-78, decided an identical question against the Revenue and in favour of the assessee.

5. Learned Counsel for the Revenue does not dispute the above position.

6. Accordingly, this question is decided against the Revenue in favour of the assessee.

Re : Q. No. (2) (by the Revenue)

7. The question has not been pressed by the assessee. Accordingly, the same is decided in favour of the Revenue and against the assessee.

Re : Q. No. (3) (by the Revenue)

8. Learned Counsel for the assessee relied upon the judgment of the hon''ble Supreme Court in Commissioner of Income Tax, Bombay Vs. Gwalior Rayon Silk Manufacturing Co. Ltd., , wherein it has been held that roads laid within the factory premises as links or providing approach to the buildings are adjuncts to the factory buildings but are not plant and machinery.

9. Applicability of Section 32A is to machinery or plant. The question referred is whether the roads constituted "plant". The judgment relied upon is, thus distinguishable. On the other hand in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, , reiterated in Builders Associations of India Vs. Union of India and others, , it was held that construction of roads was not covered by Section 32A of the Act.

10. Accordingly, we answer the question in favour of the Revenue.

R. Q. No. 1 (by the assessee)

11. Learned Counsel for the assessee fairly stated that the matter is covered against the assessee by the judgment of the hon''ble Supreme Court in Smith Kline and French (India) Ltd. and Others Vs. Commissioner of Income Tax, , wherein it was held that the assessee will not be entitled to deduction of surtax in arriving at the taxable income.

12. In view of the above, the question is answered against the assessee and in favour of the Revenue.

Re : Q. No. (2) (by the assessee)

13. Learned Counsel for the assessee fairly stated that the issue is covered against the assessee by the judgments of this Court in the case of the assessee in H.M.M. Limited Vs. Commissioner of Income Tax, and HMM Ltd. Vs. Commissioner of Income Tax, .

14. Accordingly, the question is decided against the assessee.

Re. Q. No. (1) (by the assessee)

15. This question already stands answered in view of our observations here-inabove against the assessee and in favour of the Revenue.

16. Accordingly, the question will stand answered against the assessee and in favour of the Revenue.

17. Reference is disposed of accordingly.