
(2001) 07 P&H CK 0216

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No's. 13 and 13A of 1986

H.M.M. Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 05-07-2001

Acts Referred:

Income Tax Act, 1961 — Section 35B, 35B(1), 37, 40A(5)

Citation : (2002) 172 CTR 538 : (2001) 252 ITR 842

Hon'ble Judges : Jawahar Lal Gupta, J; Ashutosh Mohunta, J

Bench : Division Bench

Advocate : A.K. Mittal, for the Appellant; R.P. Sawhney and Rajesh Bindal, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The Income Tax Appellate Tribunal has referred the following three questions for the opinion of this court on a petition by the assessee :

"(i) 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 to the Companies (Profits) Surtax Act, 1964, in arriving at the taxable income ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal rightly upheld the disallowance of the expenditure of Rs. 4,500 in respect of conference expenses ?

(iii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that no weighted deduction u/s 35B is available in respect of freight expenses of Rs. 7,75,541, octroi duty of Rs. 82,171, insurance charges of Rs. 70,376 and other expenses such as loading, unloading and conveyance expenses amounting to Rs. 327 ?"

2. Even the Revenue had sought a reference. The Tribunal has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that medical expenses by way of premium for Group Medical Insurance Scheme and reimbursements of medical expenses, electricity, gas and water charges, which are in the nature of cash payments, shall not be treated as perquisites while computing disallowance u/s 40A(5) of the Income Tax Act, 1961?"

3. So far as the questions referred to this court at the instance of the assessee are concerned, Mr. Sawhney points out that the matter is concluded between the parties by the decision in H.M.M. Limited Vs. Commissioner of Income Tax, . It has been held that the surtax paid under the Companies (Profits) Surtax Act, 1964, is not an allowable deduction. Similarly, it has also been held that the freight charges paid by the assessee do not qualify for deduction u/s 35B(l)(b) (iii). Even, the deduction of Rs. 4,500 on account of conference expenses cannot be allowed in view of the decision. No distinguishing feature has been pointed out by Mr. A.K. Mittal, who has appeared on behalf of the assessee.

4. On an examination of the matter, we are satisfied that the issues raised in this case by the assessee are concluded against it by the aforesaid decision. These are, accordingly, answered in favour of the Revenue and against the assessee.

5. As for the question regarding the payment on account of the Group Medical Insurance Scheme, the matter is concluded by the decision of their Lordships of the Supreme Court in Commissioner of Income Tax, Bombay, etc. Vs. M/s. Mafatlal Gangabhai and Co. (P) Ltd., . It has been held by their Lordships that where an assessee makes payment in cash in respect of an obligation of the employee to a third party, it would not come within the definition of "perquisite" so as to fall within the mischief of Section 40A(5) of the Income Tax Act, 1961.

6. Resultantly, this question is answered against the Revenue and in favour of the assessee.

7. Both the references are answered accordingly. In the circumstances, there will be no order as to costs.