
(1992) 10 DEL CK 0056

In the Delhi High Court

Case No : Income Tax R. No. 120 of 1982

J.M.A. Industries Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 19-10-1992

Acts Referred:

Citation : (1993) 111 CTR 48 : (1993) 200 ITR 210 : (1993) 68 TAXMAN 90

Hon'ble Judges : P.K. Bahri, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : M.G. Ramachandran, for the Appellant; B. Gupta and D.C. Taneja, for the Respondent

Judgement

B.N. Kirpal, J.—In respect of the assessment years 1974-75 and 1975-76, at the instance of the assessed, the Tribunal has referred the following three questions to this court :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the reimbursement of medical expenses by the assessed-company to its employees was covered by the definition of the word "perquisite" given in clause (b) of Explanation 2 to section 40A(5) and thereby disallowing the medical expenses to the extent they exceeded the 1/5th limit provided in section 40A(5) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the claim for weighted deduction in respect of expenses incurred on the freight, dock charges, etc., and paid in India is admissible u/s 35B of the Income Tax Act, 1961 ?

3. Whether, on the facts and in the circumstances of the case, the assessed"s claim for weighted deduction in respect of the salary paid to its director, Shri D. R. Sondhi, is admissible u/s 35B(1)(b)(viii) ?"

2. At the instance of the Department, in respect of the assessment years 1967-68 and 1974-75, the Tribunal has referred the following question to this

court :

"Whether, on the facts and in the circumstances, the Tribunal was legally correct in holding that the interest allowed, the Income Tax Officer u/s 214 by invoking section 154 of the Act for the assessment years 1967-68 and 1974-75 ?"

3. It appears that the aforesaid question of law referred by the Tribunal is not happily worded. We reframe the said question as follows :

"Whether, on the facts and in the circumstances, the Tribunal was legally correct in holding that the Income Tax Officer was not legally right in invoking section 154 of the Act and withdrawing the interest of Rs. 3,170 and Rs. 2,224 as having been wrongly allowed to the assessed for the assessment years 1967-68 and 1974-75 ?

4. The facts as found by the Tribunal in respect of the assessed's reference with regard to the three questions are as follows :

The assessed is a private limited company and has a number of employees. For the years 1974-75 and 1975-76, the company had claimed deductions of Rs. 38,923 and Rs. 51,621, respectively, u/s 40A(5) of the Income Tax Act on account of reimbursement of medical expenses to its employees. The Income Tax Officer disallowed the claim in excess of the limit of 1/5th amount as being a perquisite under the Act.

5. The assessed filed an appeal to the Appellate Assistant Commissioner and its claim was allowed. Thereafter, the Revenue filed an appeal to the Tribunal which came to the conclusion that the decision of the Income Tax Officer is not allowing the entire claim was justified.

6. It is not necessary to discuss in any great detail the various provisions of the law because an identical question came up for consideration before this court in the case of Commissioner of Income Tax Vs. Shriram Refrigeration Industries Ltd., . It was held that cash payment by the assessed to an employee towards reimbursement of medical expenses was not a perquisite within the meaning of section 40A(5) and was not to be taken into account for calculating the excess amount for disallowance in computing the profits of the assessed. Various cases which had been decided by different High courts were referred to the Commissioner of Income Tax Vs. Shriram Refrigeration Industries Ltd., . Following the said decision question No. 1 has to be answered in the negative and in favor of the assessed.

7. As regards question No. 2, apart from the plain reading of the language of the section itself, which makes it clear that expenses like freight, dock charges, etc., paid in India are inadmissible, the Madras High Court in the case of K. Vensimal and Sons Vs. Commissioner of Income Tax, has also come to a similar conclusion and has held that (at page 810) :

"Thus, the expenditure like freight, insurance, packing, cooly, etc., incurred in

India in connection with the export cannot be treated as an expenditure entitled to weighted deduction."

8. To similar effect is the view expressed by the Karnataka High Court in the case of Canara Wire and Wire Products Ltd. Vs. Commissioner of Income Tax, .

9. The Punjab and Haryana High Court has also come to a similar conclusion in HMM Ltd. Vs. Commissioner of Income Tax, .

10. We are in respectful agreement with the aforesaid decisions and the question of law which has been referred has to be answered in favor of the Department.

11. As far as question No. 3 is concerned, Shri D. R. Sondhi was the director of the company who was drawing a salary. He went abroad and the claim of the assessed was that a part of his salary related to the period during which Shri Sondhi was traveling abroad in connection with the assessed's export business. The Income Tax officer disallowed the claim, which was affirmed by the Appellate Assistant Commissioner, by observing that even if Shri Sondhi had not gone abroad, he would have received his full salary for the entire year from the assessed-company. The Income Tax Tribunal upheld this rejection and further held that :

"The Salary, which was payable to Shri Sondhi, irrespective of the fact whether he remained in India or went abroad, cannot be treated as expenditure for performance of services outside India, and then there is no evidence on the record to suggest that any contract for the supply of goods outside India was executed Shri Sondhi was also evidently not handling the export business as such of the assessed company."

12. Section 35B(1)(viii) allows that type of expenditure which is incurred wholly and exclusively on "performance of services outside India in connection with, or incidental to, the execution of any contract for the supply outside India of such goods, services or facilities."

13. The finding of fact arrived at by the Tribunal which is mentioned hereinabove has not been challenged by the assessed by way of a reference. The Tribunal having found that Shri Sondhi was not handling any export business of the assessed and further having come to the conclusion that there was no evidence to suggest that any contract for the supply of goods outside India had been executed, the conditions mentioned in the said provision were not satisfied and the weighted deduction could obviously not be granted. Furthermore, it appears to us that the expenditure which is entitled to weighted deduction must be such as would not have been incurred if services outside India were not to be performed. In other words, there has to be a direct correlation between the incurring of the expenses and the performance of services outside India. The Income Tax Tribunal and the Income Tax Officer and the Appellate Assistant Commissioner were, Therefore, right in coming to the conclusion that because the salary would have been payable to Shri Sondhi, as a director, irrespective of

the fact whether he performed the services outside India or not, the same could not be allowed weighted deduction under the said provision. The payment of salary was not because of his being required to perform services outside India but the payment was to be made to him in his capacity as a working director.

14. The third question, Therefore, has to be answered in the negative and in favor of the Department.

15. With regard to the reference at the instance of the Department the facts are that in respect of the two assessment years 1967-68 and 1974-75 interest u/s 214 amounting to Rs. 9,320 and Rs. 34,666 was allowed on excess payment of advance tax. Subsequently, while giving effect to the order of the Appellate Assistant Commissioner, the Income Tax Officer passed orders u/s 154 of the Act withdrawing the interest of Rs. 3,170 and Rs. 2,224 as having been wrongly allowed to the assessed. The reason for taking this action was that according to the Income Tax Officer the liability to pay interest on the excess amount of advance tax deposited could be only up to the date of regular assessment and not the date of fresh assessment or a modification of the assessment to give effect to the decision of the appellate or revisional authority. In coming to this conclusion, the Income Tax officer purported to follow the decision of the Allahabad High Court in the case of Lala Laxmipat Singhanian Vs. Commissioner of Income Tax and Others, . The assessed's appeal was, however, dismissed by the Appellate Assistant Commissioner and a second appeal was filed to the Tribunal. It was observed by the Tribunal that in the case of Amalgamated Coalfields Ltd. Vs. Commissioner of Income Tax, , there was a controversy regarding the meaning of the expression "regular assessment" occurring in section 214. Therefore, it could not be said that there was a mistake apparent from the record in such a case. The Calcutta High Court had in fact followed its earlier decision in the case of Chloride India Ltd. Vs. Commissioner of Income Tax and Others, . In the Amalgamated Coalfields Ltd. Vs. Commissioner of Income Tax, , wherein also action was purported to have been taken u/s 154, the Calcutta High Court held that proceedings for rectification under the said provision could not be initiated if two opinions may conceivably be taken on the legal issue involved in it. It is clear that there is a difference of opinion between the Allahabad High Court and the Calcutta High Court, at least, as to the meaning of the expression "regular assessment" occurring in section 214. This being so the provisions of section 154 could not be invoked and the mistake could not be regarded as one which is apparent on the face of the record.

16. The Supreme Court in the case of T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, has categorically held that there can be no rectification if, on a point, two different opinions are possible.

17. In view of the aforesaid decisions, this question of law must be answered in the affirmative and against the Department.

18. To conclude we hold that the question referred at the instance of the

Revenue is decided against it, whereas out of the three questions referred at the instance of the assessed, question No. 1 is decided in the assessed's favor, while the other two questions are answered in favor of the Department.

19. There will be no order as to costs.