
(1993) 01 GUJ CK 0023
In the Gujarat High Court
Case No : Income-tax Reference No. 193 of 1980

Synbiotics Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 27-01-1993

Acts Referred:

Income Tax Act, 1961 — Section 32, 35, 35(1), 40A(7)

Citation : (1993) 203 ITR 162

Hon'ble Judges : S.M. Soni, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : K.C. Patel, for the Appellant; M.J. Thakore, for the Respondent

Judgement

G.T. Nanavati, J.—The Income Tax Appellate Tribunal has referred the following three questions u/s 256(1) of the Income Tax Act, 1961, to this court for its opinion :

"1. Whether, on the facts and in the circumstances of the case, the disallowance of the claim of the assessee to the extent of Rs. 1,49,565 was justified ?

2. Whether the rejection of the claim of the assessee for depreciation on Rs. 1,38,773 being the capital expenditure incurred by the assessee on scientific research was justified ?

3. Whether, on the facts and in the circumstances of the case, the allowance of deduction of Rs. 90,249 while computing the business income of the assessee was justified ?"

2. Questions Nos. 1 and 2 have been referred at the instance of the assessee while question No. 3 has been referred to this court at the instance of the Revenue.

3. During the accounting year relevant to the assessment year 1974-75, the assessee-company had debited Rs. 1,57,170 to the profit and loss account for provision of gratuity payable to the employees of the company. During the

assessment proceedings, the assessee claimed deduction of Rs. 2,39,814 on the basis of actuarial certificates. Thus, deduction of Rs. 1,57,170 was claimed on account of the provision made and a claim for deduction of Rs. 90,249 (Rs. 2,39,814 minus Rs. 1,49,565) was made as no provision was made in that behalf. The Income Tax Officer disallowed the claim on the ground that conditions of section 40A(7) were not satisfied. This view was confirmed by the Appellate Assistant Commissioner in appeal. In further appeal to the Tribunal, it was held that the claim of Rs. 1,49,565 should fail where as the claim for Rs. 90,249 deserved to be allowed. As the claim of the assessee for deduction of Rs. 1,49,565 was not allowed, it moved the Tribunal for referring an appropriate question of law to this court in that behalf. The Revenue was also aggrieved as the Tribunal had allowed deduction of Rs. 90,249 and, therefore, it also moved the Tribunal for referring an appropriate question with respect to that sum also. The assessee's claim for depreciation of Rs. 1,38,773 was rejected by the Income Tax Officer and also by the Appellate Assistant Commissioner in appeal. The Tribunal also held that the claim of the assessee was not justified. The assessee thereupon moved the Tribunal to refer question No. 2 to this court.

4. So far as the claim for deduction of the gratuity amount is concerned, the position of law is now settled by the decision of the Supreme Court in *Shree Sajjan Mills Ltd. Vs. Commissioner of Income Tax, M.P., Bhopal and Another*, . In that case, it was held that for gratuity to be deductible, the conditions laid down in section 40A(7) had to be fulfilled. The deduction could not be allowed on general principles under any other section of the Act. In that case, the Supreme Court further held that, even if no provision is made by the assessee, section 40A(7) will apply and unless the conditions laid down therein are satisfied, the gratuity amount will not be deductible. In view of this decision, question No. 1 will have to be answered in the affirmative and question No. 3 in the negative.

5. So far as question No. 2 is concerned, it will have to be answered in the affirmative in view of the decision of the Supreme Court in *Escorts Limited and Others Vs. Union of India and others*, wherein it was held that, where a capital asset used for scientific research related to the business of the assessee is also facto an asset used for the purpose of the business, it is impossible to conceive of the Legislature having envisaged a double deduction in respect of the same expenditure, one by way of depreciation u/s 32 of the Income Tax Act, 1961, and the other by way of allowance u/s 35(1)(iv) of a part of the capital expenditure on scientific research, even though the two heads of deduction do not completely overlap and there is some difference in the rationale of the two deductions.

6. In the result, question No. 1 is answered in the affirmative, i.e., against the assessee and in favour of the Revenue; question No. 2 is answered in the affirmative, i.e., against the assessee and in favour of the Revenue and question No. 3 is answered in the negative, i.e., against the assessee and in favour of the Revenue, Reference is disposed of accordingly with no order as to costs.