

(2000) 11 P&H CK 0258

High Court Of Punjab And Haryana At Chandigarh

Case No: Income Tax A. No. 137 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Lakhani Footwear Ltd.

RESPONDENT

Date of Decision: Nov. 15, 2000

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 260A, 35, 40A, 40A(5)

Citation: (2001) 167 CTR 437 : (2001) 248 ITR 701

Hon'ble Judges: N.K. Sud, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: R.P. Sawhney and Rajesh Bindal, for the Appellant;

Judgement

1. This is an appeal u/s 260A of the Income Tax Act, 1961 (for short the "Act"), for determination of the following question of law :

"Whether, on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal has erred in law in agreeing with the submission of the assessee that the value of other perquisites should be made in accordance with the corresponding rules contained in Income Tax Rules in conformity with the judgments reported in Prem Nath Gangneja Vs. Edwardganj Public Welfare Association and Another, and Geoffrey Manners and Co. Ltd. Vs. Commissioner of Income Tax,

2. The facts of the case are that the assessee (respondent) filed a return of Income Tax on July 29, 1988, for the assessment year 1988-89 declaring its income at Rs. 19,70,440. Subsequently, a revised return was filed on February 21, 1991, declaring income of Rs. 20,44,340. The assessing authority passed the order of assessment dated March 16, 1992, u/s 143(3) of the Act, vide which he disallowed the claim of the assessee to the tune of Rs. 29,24,488 u/s 35 of the Act. The appeal filed by the assessee was partly allowed by the Commissioner of Income Tax (Appeals) and in the second appeal preferred by it, the Income Tax Appellate Tribunal, Delhi Bench

"C", New Delhi, granted further relief in the following terms :

"3. The next ground is regarding disallowance of Rs. 76,003 out of perquisites given to the managing director. Both the parties have admitted that this issue is fully covered by the decision of the Tribunal in I. T. A. No. 7022/D of 1992, for the assessment year 1988-89 in the case of the appellant. We have carefully gone through the said decision which was rendered after applying the decision of the apex court in the case of Commissioner of Income Tax, Bombay, etc. Vs. M/s. Mafatlal Gangabhai and Co. (P) Ltd., . Respectfully following the precedent, we decide the issue in favour of the assessee and against the Revenue. The Assessing Officer is directed to compute the amount of disallowance u/s 40A(5) in conformity with the decision of the Tribunal for the assessment year 1988-89 in the case of the appellant.

4. The next ground relates to disallowance out of car expenses and depreciation thereon.

Rival submissions have been heard, material on record has also been perused carefully. Out of the total cars, only one car has been made available for use by the managing director. We, therefore, direct the Assessing Officer to restrict the disallowance to the extent of 1/8th in respect of the car expenses and depreciation relatable to one car only which has been kept at the disposal of the managing director.

5. The next ground relates to disallowance of sales promotion expenses alleging the same as entertainment expenditure. Both the parties have agreed that the issue is squarely covered by the decision of the Tribunal in I. T. A. No. 7022/D of 1992 and 7086/D of 1992 for the assessment year 1988-89 in the case of the appellant. Respectfully following the precedent, we direct the Assessing Officer to treat 1/3rd of the total entertainment expenditure attributable to employees participation. The Assessing Officer is directed to compute the amount of relief accordingly."

3. We have heard Shri R.P. Sawhney and perused the record. In our opinion, the reasons assigned by the Tribunal for accepting the assessee's claim for disallowance do not suffer from any legal infirmity. Therefore, no substantial question of law arises for consideration by this court.

4. An additional reason for not entertaining the appeal is that the Revenue did not challenge the orders passed by the Tribunal in I. T. A. Nos. 7022/D of 1992 and 7086/D of 1992 for the assessment year 1988-89, in which similar relief was granted to the assessee.

5. For the reasons mentioned above, the appeal is dismissed.