
(2011) 02 MP CK 0050

Madhya Pradesh High Court

Case No: ITR No. 163 of 1998

Commissioner of
Income Tax

APPELLANT

Vs

Tobacoo Products Pvt.
Ltd.

RESPONDENT

Date of Decision: Feb. 10, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 80A, 80HH, 80I 256

Citation: (2011) 02 MP CK 0050

Hon'ble Judges: Sushma Shrivastava, J; K.K. Lahoti, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This is a reference on behalf of Revenue raising following questions for consideration of this Court.

1 Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the expenditure on payment of royalty is revenue expenditure in place of capital expenditure treated by the A.O.?

2 Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the Assessee is entitled for deduction u/s 80HH though the case of the Assessee is covered under 11th Schedule of the I.T. Act, 1961, which does not permit deduction u/s 80HH of the Act?

3 Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the Assessee is entitled for deduction u/s 80I, though the case of the Assessee is covered under 11th Schedule of the I.T. Act, 1961, which does not permit deduction u/s 80I of the Act?

2. The learned Counsel appearing for the Petitioner submitted that in the case of the Assessee M/s J.P. Tobacco Products Pvt. Limited, Damoh, all these questions were considered by the Division Bench of this Court in M.A.I.T No. 43/2005 and by the order dated 29.3.2006, the matter was decided. As the controversy has been decided by this Court in MAIT No. 43/2005, this reference can be decided accordingly.

3. The learned Counsel for the Assessee does not dispute the factual position that similar questions were raised by the Revenue in MAIT No. 43/2005 and were decided by the Division Bench of this Court by judgment dated 29.3.2006.

4. For ready reference, we quote the judgment of MAIT No. 43/2005 which reads thus:

This is an appeal u/s 260A of the Income Tax Act, 1961 (for short the "Act") against the order passed by the Income Tax Appellate Tribunal in ITA No. 317 and 318/JAB/200 for the Assessment Year 1995-96 and 1996-97. In this appeal, the Appellant has raised the following two questions:

1. Whether on the facts and in the circumstances of the case, is Tribunal was in allowing the educations u/s 80A, 80HH and 80I of Assessment year 1995-96?

2. Whether on the facts and in the circumstances of the case, the learned ITAT was justified in upholding the order of the learned CIT(A) deleting the disallowance of addition made by the AO on account of royalty for use of trademark?

2. Mr. Rohit Arya, learned Senior Counsel for the Appellant submitted that the aforesaid two questions are substantial questions of law and, therefore, this is a fit case for admitting this appeal u/s 260A of the Act.

3. Mr. H.S. Shrivastava, learned Senior Counsel for the Respondent, on the other hand, submitted that for the earlier assessment years the department also came up in appeal against the order of the Tribunal before this Court, but this Court dismissed the said appeal.

4. Regarding the first question, we find from the documents produced before us that the aforesaid question was first raised in connection with the assessment for the assessment year 1984-85. Before the Tribunal the department contended that one P.K. Tobacco Products Pvt. Ltd., Ahmedabad, used to manufacture "telephone" brand bidis and the Assessee has taken over the said unit and hence it was a case of old business and not a case of setting up a new industrial unit and the benefits under Sections 80A, 80HH and 80I of the Act which were available to new industrial units only and cannot be granted to the Assessee. The Tribunal held in its order dated 16.7.1992 in ITA No. 246/JAB/1987 and CO No. 46/Jab/87 for the assessment year 1984-85 that there is no material on record to prove that the Assessee took over any plant or machinery or raw material from M/s P.K. Tobacco Product and the only thing that it took over was the trade name of "telephone" bidi and this is not a case where Assessee started business by splitting up

the old business, but a case where the Assessee has been put a new industrial unit. The aforesaid finding of the Tribunal has been reiterated in the subsequent orders of the Tribunal including the impugned order that has been challenged in this appeal. Obviously, the aforesaid finding is a pure finding of fact and does not raise any substantial question of law.

5. Regarding the second question, this Court has already answered the same in favour of the Assessee in a reference u/s 256 of the Act in ITR No. 122/97 relying on the decision of this Court in [Commissioner of Income Tax Vs. M.B. Umbrella Industries](#), that the expenditure on payment of royalty is a revenue expenditure and not a capital expenditure.

6. For the aforesaid reason, we are not inclined to admit this appeal. The appeal is accordingly dismissed.

5. From the perusal of the facts, it is apparent that the case of the Assessee itself was considered by the Division Bench in MAIT No. 43/2005 and similar questions raised by the Revenue were decided.

6. In view of this, we do not find any ground to admit this reference, accordingly this reference is dismissed with no order as to costs.