
(2014) 368 ITR 473 : (2014) 222 TAXMAN 201

Calcutta High Court

Case No: IT Appeal No. 48 of 2003

Hindustan Lever Ltd.

APPELLANT

Vs

Commissioner of
Income Tax, Kolkata-II

RESPONDENT

Date of Decision: Jan. 22, 2014

Acts Referred:

Income Tax Act, 1961 " Section 30, 31, 33AB, 37(4), 43(6)

Citation: (2014) 368 ITR 473 : (2014) 222 TAXMAN 201

Hon'ble Judges: Tapash Mookherjee, J; G.C. Gupta, J

Bench: Division Bench

Advocate: J.P. Khaitan and S. Bose, Advocate for the Appellant; P.K. Bhowmick, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This appeal is directed against a judgment and order dated 27th September, 2002 by which the contention of the Revenue was upheld and the

appeal of the assessee was dismissed in respect of both the assessment years 1991-92 and 1992-93. There were naturally two appeals.

Aggrieved by the order of the learned Tribunal, the assessee has come up in appeal.

2. The appeal was admitted by an order dated 23rd December, 2003 on the basis of the following substantial questions of law:

I. Whether the expenditure on account of municipal tax, repairs and insurance being allowable directly under sections 30 and 31 of the I.T. Act,

the learned Tribunal was justified in upholding the disallowance of the said expenditure in respect of guest house u/s 37(4) of the I.T. Act for the

assessment years 1991-92 and 1992-93 and the decision of the learned Tribunal is perverse?

II. Whether, the interest income of Rs. 1,07,30,308/- for the assessment year 1991-92 and that of Rs. 1,17,56,069/- for the assessment year

1992-93 having arisen mostly from deposits with NABARD. IDBI Scheme on overdue bills from Brooke Bond India Limited, electricity deposits,

National Savings Certificates, time deposits, loans to employees, security deposits and so on which are either integrally connected with the

business activities of the assessee company of growing green tea leaves and manufacturing black tea and/or from investment of business funds lying

temporarily surplus with the assessee company, the learned Tribunal was justified in upholding the disallowance of deduction u/s 33AB of the I.T.

Act pertaining to the said interest income and the said decision of the learned Tribunal is perverse?

III. Whether the learned Tribunal was justified in upholding the decision of the Lower Authorities whereby the Lower Authorities held the

consideration of Rs. 1,27,460/- being the sale proceeds of wind fallen shade trees as income from other source rejecting the claim of the assessee

as an income from capital gains which was claimed as exempt u/s 54E of the I.T. Act and the said decision of the learned Tribunal is perverse?

IV. Whether the learned Tribunal was justified in not admitting and/or adjudicating the additional grounds preferred by the appellant with respect to

allowance of depreciation and computation of written down value u/s 43(6) of the I.T. Act and the said decision of the Tribunal is perverse?

V. Whether the Tribunal was justified in not directing the Assessing Officer on a proper interpretation of section 43(6) of the I.T. Act to compute

the opening and closing written down value of blocks of assets by deducting only 40% of the depreciation computed at prescribed rates being

depreciation actually allowed and the said decision of the Tribunal is perverse?

3. Mr. Khaitan, learned Senior Advocate appearing on behalf of the appellant, submitted that the first question formulated above is already

covered by a judgment of the Apex Court in the case of Britannia Industries Ltd. Vs. Commissioner of Income Tax, West Bengal, Kolkata and

Another, .

4. With regard to the question Nos. 4 and 5 formulated above, Mr. Khaitan submitted that the question Nos. 4 and 5 are on the basis of the

additional grounds raised by the appellant before the learned Tribunal. The learned Tribunal did never decide the additional grounds raised by the

appellant nor did make any discussion with regard thereto. He submitted that since the pure questions of law are involved with respect to those

additional grounds, the said points were permitted to be raised in this appeal at the time of admission.

5. We started hearing of the appeal on the second question indicated above. During the hearing, it transpired that the question for consideration

was whether the income of a sum of Rs. 1,07,29,555/- on account of interest earned by the assessee from out of deposits is to be included in the

income of the assessee from growing and manufacture of tea in order to compute the permissible deduction u/s 33AB. He submitted that the

aforesaid sum of Rs. 1,07,29,555/- has to be included in the income of growing and manufacture of tea because these deposits were made in

connection with the business of growing and manufacture of tea. Whether such deposit was made in connection with the business of growing and

manufacture of tea, as contended by the learned counsel, should have appeared from the order of the assessing officer or the order of the CIT or

the order of the learned Tribunal. It appears that at all the three stages this position was not clarified by any of the authorities. Whether the income

of Rs. 1,07,29,555/- actually arose from deposits integrally connected with the business of growing and manufacture of tea is a pure question of

fact. Unless a finding is recorded with regard thereto, it is not possible to answer the question whether that income can be taken into account for

the purpose of allowing deduction u/s 33AB of the income tax Act. Therefore, it appears to us that the adequate attention was not given to the

matter when the same was dealt with at different stages.

6. We are, as such, of the opinion that the matter should go back to the Tribunal for a rehearing on all the issues, except the one which is already

covered against the assessee by the judgment of the Hon"ble Supreme Court as indicated above. The appeal is disposed of accordingly.