

**(2008) 04 DEL CK 0177****Delhi High Court****Case No:** None

Commissioner of Income Tax

APPELLANT

Vs

Goodyear India Ltd.

RESPONDENT

**Date of Decision:** April 28, 2008**Acts Referred:**

- Income Tax Act, 1961 - Section 260A

**Citation:** (2008) 173 TAXMAN 377**Hon'ble Judges:** Manmohan Singh, J; Madan B. Lokur, J**Bench:** Division Bench**Judgement**

@JUDGMENTTAG-ORDER

1. In these five appeals u/s 260A of the Income Tax Act, 1961, pertaining to assessment years beginning from 1972-73 onwards, the following substantial question of law arises for consideration:

Whether the Tribunal was correct in law in deleting the undisclosed income of the assessee as recorded by the Securities and Exchange Commission in USA?

2. Some investigations were conducted by the Securities and Exchange Commission ("SEC for short) in America in respect of the parent company of the assessee that is M/s Goodyear Tyre & Rubber Co., USA. The SEC appears to have filed a complaint in USA in the District Court of Columbia. It transpires that it was discovered during the investigation that the assessee had provided amounts upto 8 lakh US dollars in India for unlawful purposes such as payments to Government officials etc. This amount was not shown in the books of account of the assessee.

3. As a result of the disclosure made available from the investigation carried out in USA, the assessee sent two letters to the revenue, one dated 9-3-1977 and other dated 14-3-1978 in which it was stated that the assessee has no desire to protract the litigation and some reasonable amount may be added by the IT authorities by

spreading over the same in the relevant assessment years and taxed accordingly. It was also stated that penalty proceedings may not be launched against the assessee.

4. Based on the information received from USA and the admissions made by the assessee, the assessing officer as well as the CIT(A) spread over the amount of Rs. 62 lakhs over the five assessment years that we are concerned with and added an amount in each assessment year.

5. The Tribunal came to the conclusion, based on certain investigations conducted in India that there was no material to show that the assessee had kept any amount outside its books of account.

6. The view taken by the Tribunal is completely unsustainable particularly when the parent company M/s Goodyear Tyre & Rubber Co., USA made a full disclosure of the amounts kept outside the assessee's books of account in India without admitting the allegations made against it. Moreover, even the assessee in India had given two letters wherein it has been mentioned that it is prepared to surrender the amount since it does not want any protracted litigation and prayed that penalty proceedings may not be launched against the assessee.

7. In view of the facts which have emerged from the complaint made by the SEC in USA as well as the letters sent by the assessee to the IT department in India, there can be no manner of doubt that the assessee had certain amounts outside its books of account which were used for purposes that were not at all legitimate inasmuch as the assessee was funding foreign trips by Indian Government officials and had made payments to the electricity undertaking for assuring continuous power supply to the factory premises of the assessee.

8. Learned counsel for the assessee has relied upon Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi, Commissioner of Income Tax Vs. Bharat General Reinsurance Co. Ltd., and Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala and Another, to contend that merely because the assessee agreed to add certain amounts to its income does not amount to concealment of income and it does not mean that the amount should be taxed. We do not think that such a broad proposition has been laid down or can be accepted in every case. Insofar as the present case is concerned, there was enough evidence to show that the assessee had kept available the amount for purposes that were not at all legitimate and the admission was made by the assessee consequent to investigations by the SEC.

9. In view of the above, we answer the question in the negative, in favour of the revenue and against the assessee.

10. The appeals are disposed of.