The Commissioner of Income Tax Vs Bajaj Auto Ltd.

Court: Bombay High Court

Date of Decision: March 2, 2009

Acts Referred: Income Tax Act, 1961 â€" Section 256(1), 32(1), 37(1), 37(2B), 37(3)
Income Tax Rules, 1962 â€" Rule 5, 6D

Citation: (2010) 322 ITR 29 : (2009) 182 TAXMAN 163

Hon'ble Judges: R.S. Mohite, J; F.I. Rebello, J

Bench: Division Bench

Advocate: Parag Vyas and P.S. Sahadevan, for the Appellant; Vasanti B. Patel, for the Respondent

Judgement

R.S. Mohite, J.
The questions of law which have been referred to this Court u/s 256(1) of the Income Tax Act are as follows.

1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in upholding the order of the Commissioner of

Income tax (Appeals) that the ITO will recompute the disallowance under Rule 6D by aggregating the expenditure of all tours in place of the

present computation of the disallowances made by the ITO on the basis of each trip of the employees?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in upholding the order of the Commissioner of

Income tax (Appeals) that the addition of Rs. 55,27,000/- on account of duty drawback and cash assistance on accrual basis was not justified?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in upholding the order of the Commissioner of

Income tax (Appeals) that the assessee is entitled for depreciation on canteen building at the higher rate applicable to factory building?

4. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in upholding the order of the Commissioner of

Income tax (Appeals) that the assessee is entitled to deduction u/s 80G of Rs. 5,00,000/- instead of Rs. 2,50,000/-?

5. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in confirming the CIT(A)''s view that the

expenditure incurred on advertisement for appointment/termination of dealers is taking to recruitment of personnel contemplated u/s 37(3B)(ii) and

that such expenditure is outside the purview of disallowance u/s 37(3A) of the Act?

2. As regards Question No. 1, Counsel submits that the issue referred is answered affirmatively by the decision of this Court in the case of

Commissioner of Income Tax Vs. Aorow India Ltd., . In the circumstances, question is answered in the affirmative and against the assessee.

3. As regards Question No. 2, this question has been answered affirmatively by the Judgment of this Court in the case of Commissioner of Income

Tax Vs. Matchwell Electricals (I) Ltd., . Following the said judgment, we answer this question in the affirmative and in favour of the assessee.

4. As regards Question No. 3, this issue was first considered by the Madras High Court in the case Commissioner of Income Tax, Tamil Nadu-III

Vs. Engine Valves Ltd., . While deciding the question the Madras High Court observed as under.

But, whatever expression we might employ to describe the culinary process, there is no doubt whatever that the use of fuel and other forms of

energy in that part of the canteen, would have the same damaging effect on the life of the building as a regular manufacturing process would by the

use of plant of machinery. These considerations definitely point to the conclusion that a canteen building is, in the proper sense of the term, a

factory building for the purpose of depreciation allowance.

5. The Judgment of the Madras High Court was followed by the Karnataka High Court in the case of Commissioner of Income Tax, Karnataka-I,

Bangalore Vs. Motor Industries Company Ltd., and both these judgments were again approved by the Karnataka High Court in its later judgment

in the case of Commissioner of Income Tax Vs. Motor Industries Co. Ltd., . This issue was once again dealt with by the Karnataka High Court in

the case of Widia (India) Limited Vs. The Chief Commissioner of Income Tax, wherein it was once again held that Canteen building located with

factory premises for welfare of workmen is part and parcel of factory building- entitled to higher rate of depreciation.

6. On this question we are in respectful agreement with the reasoning and finding of the Madras High Court and the Karnataka High Court in the

aforesaid stated cases. Section 32(1) provides that depreciation in respect of assets will be percentage of its written down value as may be

prescribed. These percentages are prescribed in Rule 5 read with Appendix-I to the Income Tax Rules, 1962.

Appendix I prescribes higher rate of depreciation in respect of ""factory buildings (exclusive office, godowns, officers and employees quarters,

roads, bridges, culverts, wells and tube wells)"".

Under the Factories Act, factories which employ over 250 workmen, are mandatorily required to provide a canteen. The canteen premises is thus

a necessary adjunct to the factory building and it is meant for the benefit of the workers. It is also noticed that while making exclusion in respect of

various kinds of buildings such as offices, quarters, roads, bridges, culverts, wells and tube wells, no specific exclusion is made for canteens. If

canteens were meant to attract the lower depression applicable to general buildings, then it would have been specifically excluded from the term

factory buildings as appearing in Appendix-I Part-1(i)(2). We therefore, answer this question in the affirmative and in favour of the assessee.

7. As regards Question No. 4 both sides agree that the same is covered by the decision of this Court in the case of Commissioner of Income Tax

Vs. Mafatlal Fine Spinning and Manufacturing Co. Ltd., On perusing the said judgment and following the same, we answer the question in the

negative and against the assessee.

8. As regards Question No. 5 it would be useful to reproduce Section 37(3)(A) and 3(B) which were in force during the relevant assessment

years. The relevant parts of the said Sections are as under.

3(A) Notwithstanding anything contained in Sub-section (1) but without prejudice to the provisions of Sub-section (2B) or Sub-section (3), where

the aggregate expenditure incurred by an assessee on advertisement, publicity and sales promotion in India exceeds forty thousand rupees, so

much of such aggregate expenditure as is equal to an amount calculated as provided hereunder shall not be allowed as a deduction, namely:

(i) Where such aggregate expenditure does not exceed 1/3 per cent of the turnover or, as the case may be, gross receipts of the business or

profession. 10 per cent of the adjusted expenditure;

(ii) Where such aggregate expenditure exceeds 1/4 per cent but does not exceed 1/2 per cent of the turnover or, as the case may be, gross

receipts of the business or profession. 12.1/2 per cent of the adjusted expenditure;

(iii) Where such aggregate expenditure exceeds 1/2 per cent, of the turnover or, as the case may be, gross receipts of the business or profession.

15 per cent of the adjusted expenditure.

Explanation- For the purposes of this sub-Section-

(a) ""adjusted expenditure"" means the aggregate expenditure incurred by the assessee on advertisement, publicity and sales promotion in India as

reduced by so much of such expenditure as is not allowed under Sub-section (1) and as further reduced by so much of such expenditure as is not

allowed under Sub-section (2B) or Sub-section (3):

(b) ""turnover"" and ""gross receipts"" means turnover or gross receipts, as the case may be, as reduced by any discount or rebate allowed by the

assessee.

3(B) Nothing contained in Sub-section (3A) shall apply in relation to any expenditure incurred by an assessee on-

(i) advertisement in any small newspaper;

(ii) advertisement in any newspaper for recruitment of personnel;....

It was sought to be contended that Section 37(3B)(ii) provided that the benefit to be conferred u/s 37(3A) would not apply to expenditure

incurred by the assessee on an advertisement in a newspaper for recruitment of personnel. In the present case the advertisement was given for

appointment of dealers. In our view, the appointment of a dealer by the assessee would not be akin to recruitment of personnel. A word personnel

as defined in the Oxford dictionary is ""staff of an organization, people engaged in particular service profession etc. employees, manpower, people,

staff, workers, workforce. profession etc."" A dealer in our view is an independent entity and is an agent who would not be covered by the term

personnel. Such an agent is appointed under a contract of agency and is not recruited. In our view, therefore, the question is required to be

answered in the negative and in favour of the assessee.

8. In view of the questions so answered, the reference stands disposed off. No order as to costs.