

(1994) 03 BOM CK 0084

Bombay High Court

Case No: Income-tax Reference No. 386 of 1982

Commissioner of Income Tax

APPELLANT

VS

Century Spg. And Mfg. Co. Ltd.

RESPONDENT

Date of Decision: March 23, 1994

Acts Referred:

- Income Tax Act, 1961 - Section 10(10), 23(1), 24(1), 30, 40A(5)

Citation: (1994) 210 ITR 783

Hon'ble Judges: Sujata V. Manohar, J; B.P. Saraf, J

Bench: Division Bench

Advocate: Dr. V. Balasubramaniam, for the Appellant; S.J. Mehta, for the Respondent

Judgement

Dr. B.P. Saraf, J.

By this reference u/s 256(1) of the Income Tax Act, 1961, made at the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following questions of law to this court for opinion -

"1. Whether, on the facts and in the circumstances of the case, the repairs and reconstruction cess levied by the Bombay Municipal Corporation is a permissible deduction under the provisions of section 23(1) of the Income Tax Act, 1961 ?

2. Whether, on the facts and in the circumstances of the case, the expenditure of Rs. 32,845 incurred by the assessee on the foreign travelling expenses of the employees was deductible as revenue expense, while computing the business income of the assessee ?

3. Whether, on the facts and in the circumstances of the case, the disallowance of Rs. 5,000 being a part of the professional fees paid to Messrs. Mulla and Mulla for drafting an agreement in connection with the investments was justified ?

4. Whether, on the facts and in the circumstances of the case, the sum of Rs. 20,190 paid in connection with the litigation in respect of the import duty was an admissible

expenditure, while computing the business income of the assessee ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount of gratuity exempt u/s 10(10) should be excluded and the excess of gratuity alone should be taken for the purposes of the disallowance u/s 40A(5) ?"

2. The controversy in the first question relates to the allowance of deduction in the computation of income from house property on account of repair and reconstruction cess levied by the Bombay Municipal Corporation. Section 24(1) of the Act provides that in computing the income chargeable under the head "Income from house property", any sum paid on account of any tax levied by the State Government in respect of the property shall be allowed as a deduction. The repairs and reconstruction cess collected by the Bombay Municipal Corporation is a tax levied by the State Government in respect of the property in question. That being so, we are of the clear opinion that it is an allowable deduction in the computation of income from house property u/s 23(1) of the Income Tax Act. Accordingly, question No. 1 is answered in the affirmative, i.e., in favour of the assessee.

3. So far as question No. 2 is concerned, on a perusal of the facts and circumstances of the case and the findings of the Tribunal, we find that the Tribunal was correct in holding that the expenditure of Rs. 32,845 incurred by the assessee on the foreign travel of its employees was a deductible expenditure in computing its business income. This question is also, therefore, answered in the affirmative and in favour of the assessee.

4. So far as question No. 3 is concerned, in view of the finding of the Tribunal that the expenditure of Rs. 5,000 being part of the professional fees paid to Mulla and Mulla was incidental to the carrying on the business of the assessee, we are satisfied that this amount was allowable as a deduction. We find that the Tribunal was justified in allowing deduction for the said amount. This question is, therefore, answered in the negative and in favour of the assessee, that is to say, the allowance of deduction of Rs. 5,000 was justified.

5. So far as question No. 4 is concerned, from the facts and circumstances of the case and the findings of fact arrived at by the Tribunal, it is clear that the litigation expenditure of Rs. 20,190 incurred in connection with the litigation in respect of the import duty was a revenue expenditure admissible as a deduction. The Tribunal was, therefore, justified in allowing deduction in respect of the same. Question No. 4 is accordingly answered in the affirmative and in favour of the assessee.

6. Question No. 5 is covered by the ratio of a latest decision of this court dated December 17, 1993, in Income Tax Reference No. 212 of 1982 Commissioner of Income Tax Vs. Colgate Palmolive (India) Pvt. Ltd., to which one of us (the learned Chief Justice) was a party. Following the same, this question is also answered in the affirmative and in favour of the assessee.

7. This reference is disposed of accordingly.

8. No order as to costs.