

**Premier Proteins Ltd. Vs. Cit**

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**Court :** Madhya Pradesh

**Decided On :** Sep-28-2004

**Reported in :** (2005)193CTR(MP)37

**Appeal No. :** IT Ref. No. 73 of 1999 28 September 2004

**Appellant :** Premier Proteins Ltd.

**Respondent :** Cit

**Advocate for Pet/Ap. :** G.M. Chafekar with D.S. Kale, *for the Assessee* R.L. Jain,  
*for the Revenue*

**Judgement :**

ORDER

**AM. Sapre, J.**

This is an application made by assessee under section 256(2) of the Income Tax Act consequent upon the dismissal of their application made under section 256(1) of the Act by the Tribunal by order dated 27-1-1997, passed in RA Nos. 114/115/Ind/1998 which in turn arises out of an order dated 14-5-1998, passed in ITA Nos, 514/Ind/1992 and 924/Ind/1994 by the Tribunal. In the opinion of Tribunal, since the questions proposed are essentially based on questions of facts and are in fact questions of fact involving no legal issue as such which may attract the jurisdiction of High Court to answer the same on merits under section 256(1)

ibid and hence, the Tribunal declined to make the reference to this court. It is then the assessee has come up under section 256(2) of the Act by making this application asking this court to call for reference to answer following questions of law :

'(01) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the service charges of Rs. 9,24,257 paid by the applicant-company to its holding company was not to the same company to whom, such service charges have been agreed to be paid without appreciating that only the name of the holding company had been changed and not its identity

(02) Whether, on the facts and in the circumstances of the case, when section 40A(2) only provides for disallowance of expenses incurred which are excessive or unreasonable, the entire service charges paid by the appellant- company to its holding company for services rendered by it could be disallowed by the Tribunal by invoking section 40A(2) ?

(03) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in invoking the provisions of section 40(2) in the present case when both the companies concerned were public limited companies ?

(04) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the entire service charges paid were unreasonable and excessive considering the services rendered by the holding company ?'

2. Heard Shri G.M. Chafekar, learned senior counsel, with Shri D.S. Kale, learned counsel for the applicant, and Shri R.L. Jain, learned counsel for non applicant.

3. Having heard learned counsel for the parties and having perused record of the case, we are of the view that Tribunal was right in dismissing the application made by an assessee under section 256(1) of the Act. In other words, while concurring with the view taken by the Tribunal, we too hold that questions proposed by the assessee are questions of fact and that really do not arise out of the appellate order of the Tribunal.

4. Indeed, we would like to quote in extenso the reasoning of the Tribunal contained in paras 3 and 4 of the impugned order dated 27-1-1997 (Annex.-I) which led to dismissal of the application made by the assessee :

'Para 3-However, the facts relating to the proposed questions are that the assessee is a subsidiary of M/s Premier Industries (India) Ltd. and the assessee-company paid service charges @ 1/2 per cent of turnover, including purchase of raw material to its holding company. As per the letter dated 12-3-1991, it was stated before the assessing officer on behalf of the assessee that the service charges have been paid because the said company was provided a store premises at Dewas, weighment bridge, telephone facilities, technical know-how, maintenance of service, export arrangement, telex, etc. and also provided the market network. The explanations of the assessee were not accepted by the assessing officer for the reason that in the profit and loss account the assessee had debited the weighment charges under the head of miscellaneous factory expenses. The lease rent of the premises and telephone, telex and postage expenses were also debited in the profit and loss account. After examining these details of expenses debited in the profit and loss account of the assessee-company and its holding company, the assessing officer was of the view that there was no business necessity of payment of service charges to the holding company and he disallowed the claim of assessee under section 40A(2)(b) of the Act. The addition was also confirmed by the CIT (A).

4. While dealing with the issue, the Tribunal has examined the material available on record with sagacity and finally arrived at a conclusion that the assessee has failed to discharge its onus which primarily lay upon him to prove the reasonableness of payment made to its holding company. The detailed observation of the Tribunal find place in paras 6 and 7 of its order.'

5. Mere perusal of the aforesaid reasoning would show that it does not involve any question of law as such but it only involves questions of fact. The question relating to disallowance of particular expense claimed by an assessee as allowable deduction under section 40A(2)(b) of the Act, if disallowed on facts by taxing authority, then the same does not involve any question of law as such. At least in

the facts of the case, it does not appear to be so. The High Court in exercise of jurisdiction conferred under section 256(2), cannot probe questions of facts, nor can it examine the correctness of explanation offered by the assessee. It is not permissible in reference jurisdiction. In other words, if the fact of allowing the deduction is based on giving any explanation by the assessee and the same having been either accepted or rejected, it must come to an end at the stage of Tribunal which exercises its appellate powers. It is only if the issue involved is pure and abstract question of law requiring some interpretation then the jurisdiction of High Court under section 256(2) can be invoked or if Tribunal declines to make the reference, then High Court can call for the reference by taking aid of section 256(2) *ibid*.

6. In the facts of this case, we have not been so able to notice any such infirmity.

7. Submission of learned counsel for the applicant (assessee) was that Tribunal wrongly placed reliance on some letter for reaching to the conclusion on facts. We are not impressed by this submission. In our opinion, the submission is founded on facts involving no legal question as such. Such submission cannot be accepted while considering calling for the reference on a question of law.

8. In view of aforesaid discussion, we find no case to call for reference on question proposed by the assessee. As a consequence, the application fails and is dismissed.

No costs.

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