

Goodyear India Ltd. Vs. Commissioner of Income-tax Delhi-i

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Court : Delhi

Decided On : Jul-07-2000

Reported in : (2000)162CTR(Del)286; [2000]246ITR116(Delhi)

Judge : Arijit Pasayat, C.J.,; D.K. Jain, J.

Acts : [Income Tax Act, 1961](#) - Sections 260-A

Appeal No. : I.T.A. 55 OF 2000

Appellant : Goodyear India Ltd.

Respondent : Commissioner of Income-tax Delhi-i

Advocate for Pet/Ap. : Mr. S.K. Aggarwal, Adv

Judgement :

ORDER

Arijit Pasayat, CJ.

1. This is an appeal under Section 260A of the Income-tax Act 1961 (in short the 'Act').

2. The factual position noted in brief is as follows:

For the assessment year 1987-88 appellant, for the sake of convenience appellant is hereinafter referred to as 'assessee', filed its return of income. Several amounts

were claimed on the following heads as expenditure:-

- (a) canteen expenses Rs.33,37,000/-
- (b) sports activity expenses Rs.66,15,000/-
- (c) sales and misc. expenses Rs.15,78,000/-
- (d) office expenses Rs.35,41,000/-
- (e) incidental expenses Rs.22,68,000/-

3. Taking note of assessor's stand that the records were voluminous, it was asked to furnish several details in respect of the aforesaid claims of expenses. For the purpose of test checks, details and vouchers for two months i.e. November and December 1986 were directed to be produced. Assessing Officer found that the details were not complete and in any event relevant vouchers were not produced to substantiate the claim of expenditure. Accordingly ad hoc disallowances of Rs. 5 lacs, Rs.1 lakh, Rs.2.5 lacs, Rs.5 lacs and Rs.3.5 lacs respectively on the aforesaid five heads were made. The matter was carried in appeal before the Commissioner of Income-tax (Appeals)IX New Delhi (hereinafter referred to as the 'CIT(A)'). As the assessed expressed inability to produce the records, the additions were confirmed. The matter was carried in appeal by the assessed before the Income-tax Appellate Tribunal, Delhi Bench 'A' Delhi (in short the 'Tribu-nal'). By the impugned judgment Tribunal noticed that the disallowances were made on justifiable grounds. It found no force in the assessor's stand that as there was no adverse comments from the auditors and on the basis of past records, disallowance should not have been made. However it restricted the total disallowance to Rs.10 lacs.

4. In support of the appeal it has been contended that when no adverse comments were given by the auditors in the tax audit (as the audit under Section 44AB of the Act is commonly described), the authorities should not have resorted to disallowance of a portion of the claim. It was highlighted that the purpose of a tax audit is to do away with the requirement of making routine additions testing correctness of totals and corrections of total and verifications of the purchase and

sales and to see whether they are properly vouched or not. It is also submitted that when details were produced, merely on the ground that all the entires could not be substantiated by vouchers, such a huge addition should not have been made.

5. The scope of an appeal under Section 260A of the Act is very limited and is restricted to adjudication of substantial questions of law. As the factual position highlighted above would go to show, assessed was unable to furnish details and/or to justify the claims with reference to vouchers. Even the 1st Appellate authority required the assessed to satisfy him about the claim by production of vouchers, but the assessed expressed its inability. CIT(A) went to the extent of asking the assessed as to whether it would be in a position to produce relevant details and vouchers before the Assessing Officer in case a remand was made. There also it was categorically admitted that the vouchers and details cannot be produced before the Assessing Officer. Obviously the authorities were left with no option except to disallow portion of the claim. We find that considering the magnitude of turnover and extent of expenses claimed, the disallowance cannot be said to be unreasonable. The disallowance originally made by the Assessing Officer was to the tune of Rs.17 lacs which was reduced in appeal to Rs.10 lacs by the Tribunal. We do not think it desirable to enter into arena of factual adjudication which is foreign to the scope of an appeal under Section 260-A of the Act. The other question which was highlighted is that once there was a tax audit under Section 44AB, the Income-tax Officer should not insist upon for production of the records or vouchers or details. Such a broad proposition cannot be laid down. No doubt sanctity is to be attached to the audit report given by a qualified Chartered Accountant. Merely because an audit report is available there is no fetter on the power of the Income-tax Officer to require the assessed to justify its claim with reference to records, materials and evidence. Such a power is inherent in an Assessing Officer in the scheme of the Act.

6. As indicated above, scope of an appeal under Section 260A is restricted to substantial questions of law. The expression 'substantial question of law' has not been defined anywhere in the Statute. But it has acquired a definite connotation through various judicial pronouncements. In *Chunilal Mehta and Sons Ltd. Vs . Century Spinning and Mfg. Co. Ltd.*, : AIR 1962 SC1314 , the apex Court laid

down the following tests to determine whether a substantial question of law is involved. The tests are (i) whether directly or indirectly it affects substantial right of the parties, or, (ii) the question is of general public importance, or, (iii) whether it is an open question in the sense that issue is not settled by the Federal Court, Privy Council or the Supreme Court, or, (iv) the issue is not free from difficulty, and (v) if calls for a discussion for alternative view. There is no scope for interference by the High Court on a finding recorded when such finding could be treated to be a finding of fact. A finding of fact must, therefore, be held to have become final.

7. We do not find any merit in the appeal, which is dismissed.

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