Cit Vs. Mahaveer Polymers

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Court : Rajasthan

Decided On : Feb-13-2002

Reported in : (2002)175CTR(Raj)274

Appeal No. : IT Ref. No. 7 of 1993 13 February 2002 A.Y. 1985-86

Appellant : Cit

Respondent : Mahaveer Polymers

Advocate for Pet/Ap. : R.B. Mathur, *for the Revenue* R.L. Kaliya, *for the Assessee*

Judgement :

By the court

On an application filed under section 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following questions for the opinion of this court :

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the amount of Rs. 1,92,904 for calculating the disallowance under sections 37(3A)/37(3B) of the Income Tax Act, 1961 ?'

'Whether, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the amount of Rs. 38,310 being the expenditure on maintenance of delivery van, motorcycle and scooter for calculating the, disallowance under section 37(3A) read with section 37(3B) of the Income Tax Act, 1961 ?'

'Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in setting aside the issue and in directing to allow the amount of Rs. 98,208 disallowed under section 43B in case the payments had been made within the time permissible under the relevant law, even if the same were paid after the close of the previous year relevant to the accounting year of the assessee ?'

2. The relevant assessment year is 1985-86. Year ended on 31-12-1984. The assessee- company has shown an income of Rs. 2,76,511 during the relevant accounting year. During the assessment year in question, the assessee-company has incurred an expenditure of Rs. 1,92,904 as the amount given to its selling agents on the sales made through them. The assessing officer has invoked the provisions of section 37(3A) holding that this expenditure is for sales promotion.

In appeal, the Commissioner (Appeals) has upheld the view taken by the assessing officer. In appeal before the Tribunal, the Tribunal has allowed the claim of the assessee.

3. The facts are not in dispute that the payment of this amount was made to the agents not only for the sales effected but it was the payment made to the agents in addition to the rebate or discount or commission already paid for their regular sales made by them for purchases which is beyond certain limits. When the incentive is given for more and more purchase or sale, it is nothing but for promotion of the sale. Tribunal was not justified in reversing the view taken by the assessing officer and Commissioner (Appeals). When the amount in question is undisputedly paid in addition to their regular commission or discount on a sale beyond particular limit, that is, nothing but for promoting the sale.

4. Issue in question No. 2 relates to deletion of amount of Rs. 38,310 being the expenditure on maintenance of delivery van motorcycle and scooter for calculating the disallowance under section 37(3A)/37(3B) of the Act.

5. Mr. Kalia, learned counsel for the assessee submits that the provisions of sub-section (3A)/(3B) of section 37 can be invoked only in the case of motorcars and not in the case of vans.

In clause (ii) of sub-section (3B) of section 37, there is a reference for motor cars and not the vans. He further submits that vans and motor cars are two different commodities, therefore, when the legislation wants the disallowance under section 37(3A) in respect of the expenditure on motor cars, the expenditure on vans does not hit by the provisions of sub-section (3A) of section 37.

6. Issue is question No. 3 relates to disallowance under section 43B of the Act. Now the issue is concluded by their lordships in the case of Allied Motors (P) Ltd. v. CIT : [1997]224ITR677(SC) .

7. Considering the facts, as stated above, we answer question No. 1 in negative i.e., in favour of revenue and against assessee.

Question No. 2 we answer in affirmative i.e. in favour of assessee and against the revenue.

Question No. 3 also we answer in affirmative i.e., in favour of assessee and against the revenue.

Reference so made stands disposed of according.

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