

ITA No. 799 of 2004

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

C. I. T. KOLKATA - II
Versus
WILLIAMSON MAGOR & CO. LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 8th April, 2015.

Mr. R.N. Bajoria, Sr. Advocate
Mr. A. Gupta, Advocate
..... for the Respondent

The Court: The appeal was presented on 23rd November, 2004. Thereafter, the appellant did not take any step whatsoever. The appeal has not as yet been admitted. On 13th January, 2015, the appeal was listed under the heading "For Dismissal" when no one appeared on behalf of the appellant. The matter was directed to be listed on 15th January, 2015 under the heading "For Dismissal" for the second time. On 15th January, Mr. R. K. Chowdhury appeared for the appellant and prayed for liberty to serve which was granted. On 6th February, 2015, after service, the matter appeared when the matter was fixed by consent of the parties for hearing after two weeks. The matter is in the list for some time. Everytime, the matter was called on, the learned advocate for the respondent was found to be present but the learned advocate for the appellant was not present.

In the circumstances, learned advocate for the respondent was requested

to give a notice to the learned advocate for the appellant. Such notice was given. A duly receipted photocopy of such notice has been put on record by Mr. Bajoria, learned Senior advocate appearing on behalf of the respondent.

Today, the matter is appearing under the heading "For Dismissal". When the matter was taken up, the learned advocate appearing for the appellant prayed for adjournment. Such prayer is refused.

The appeal arises out of a judgement and order dated 1st July, 2004 passed by the learned Income Tax Appellate Tribunal pertaining to the assessment years 1998-99 and 1999-2000.

The following questions of law have been suggested by the appellant though no one appeared in support of the appeal :

- "a) *Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in deleting the disallowance of Rs.71,53,542 for the Assessment year 1998-1999 and Rs.2,92,99,950.00 for the Assessment year 1999-2000 on account of interest made by the Assessing officer proportionately on prorata basis and confirmed by the Commissioner of Income Tax (Appeals) under Section 36(1)(III) of the Income Tax Act, 1961 being the interest under charged by the respondent/assessee to the extent of 5% on borrowed capital given on loan to its associate concerns following the Judgment of the Learned Tribunal in the case of the Respondent/assessee itself for the Assessment years 1996-97 and 1997-98 ?*

- b) *Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in holding that the borrowed capital given on loan by the respondent/assessee to its associate concerns undercharging interest was properly used by the respondent/assessee for its business so as to eligible for the deduction under Section 36(1)(III) of the said Act?*
- c) *Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in deleting the disallowance of Rs.3,75,000.00 during the Assessment year 1998-1999 being the expenditures incurred, by the respondent/assessee as the flagship company purported to promote the corporate image of the group companies, in sponsoring the races held by Royal Calcutta Turf club and not for any business carried on by the respondent/ assessee ?*
- d) *Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in deleting the disallowance of Rs.32,870.00 out of Rs.82,870 during the assessment year 1998-1999 on account of the legal fee paid by the respondent/assessee to Khaitan & Co. against the bill dated 28th February, 1997 in spite of the Respondent/assessee having maintained its account on mercantile basis ?*
- e) *Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in deleting the disallowance of Rs.50,000.00 out of Rs.82,870.00 during the assessment year 1998-*

1999 on account of the legal charges incurred by the respondent/assessee for the amalgamation of its two subsidiary companies namely Desai Investment Limited and Fairlie Place Investment Limited by holding the same as a revenue expenditure of the respondent/assessee?

- f) Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in deleting the disallowance of Rs.1,51,795.00 paid by the respondent/assessee on account of the entrance fees of the club out of total of Rs.5,95,795.00 and in upholding disallowance for the balance of Rs.4,44,201.00 paid towards subscription to the club during the year 1999-2000 following the judgment of the Hon'ble Gujrat High Court in the case of Gujrat State Export Corporation reported in 209 Income Tax Reports at page 649.*
- g) Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in deleting the disallowance of Rs.4,03,44,000.00 paid by the respondent/assessee to its employees during the assessment year 1999-2000 under Voluntary Retirement Scheme ignoring the Board Circular dated 23rd January 2001 referred to by the Assessing Officer and the provisions made under Section 35DDA of the Income Tax Act, 1961 and without considering the enduring nature of benefit therefrom derived by the respondent/assessee?*

- h) *Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in deleting the estimated disallowance of proportionate interest of Rs.2,00,98,622 with reference to Section 36(1)(III) of the said Act during the year 1998-99 on borrowed capital for the purpose of determining the tax free dividend income earned by the respondent/assessee in spite of there being no material before the Learned Tribunal to come to a conclusion that borrowed capital was not used by the respondent/assessee for investment in shares?*
- i) *Whether in the facts and in the circumstances of the case, the Learned Income Tax Tribunal erred in law in deleting the addition of Mesne Profit, due to the respondent/assessee from Food Corporation of India, from income for the respondent/assessee during the assessment years 1998-1999 and 1999-2000 duly confirmed by the Commissioner of the Income tax (Appeals) and in directing the inclusion thereof in the Assessment Year 2000-2001?*
- j) *Whether in the facts and in the circumstances of the case, the finding of the Learned Tribunal for the purpose of deleting the disallowance of Rs.77,37,000.00 and in upholding the disallowance of Rs.39,43,031 on account of expenditures of the respondent/assessee during the assessment year 1999-2000 under the head "Building Repairs & Maintenance is perverse?"*

The question nos.(a) and (b) do not really arise for consideration because the view taken by the learned Tribunal is evidently based on a judgement of the Delhi High Court in the case of *CIT v. Sahani Silk Mills P. Ltd. reported in (2002) 253 ITR 294*.

The question no.(c) pertains to the view taken by the learned Tribunal on the basis of a judgement of Delhi High Court in the case of *Addl. Commissioner of Income-Tax v. Delhi Cloth and General Mills Co. Ltd. (1983) 144 ITR 280* wherein it was held that the expenditure incurred by the assessee in organising tournaments was an allowable deduction.

The question nos.(d) and (e) are questions on facts. The learned Tribunal has allowed an expenditure of a sum of Rs.32,870/- on account of fees for legal assistance paid to the Solicitors while a sum of Rs.50,000/- was disallowed. It is not in dispute that the expenditure was, in fact, incurred. The only point was that the payment was in connection with services rendered and billed for on 28th February, 1997 and therefore, the expenditure could not be allowed in a subsequent year but that question has not been given much importance by the learned Tribunal for the simple reason that an appeal relating to the year to which the expenditure pertained was also pending and therefore there was, in substance, no reason why the expenditure should not have been allowed. Therefore, the question nos.(d) and (e) are of no substance altogether.

So far as the question no.(f) is concerned, the learned Tribunal in allowing entrance fees paid to the clubs relied on the judgement of Gujrat High Court in

the case of Gujrat State Export Corporation Ltd. v. CIT reported in (1994) 209 ITR 649.

The question no. (g) does not really arise for consideration because the money spent by the assessee in meeting the liability of voluntary retirement was recovered from the subsidiaries. The money so recovered has been offered for taxation and has been taxed as income arising from other sources whereas the expenditure incurred on account of voluntary retirement was disallowed. The obvious incongruity was removed by the learned Tribunal. Therefore, this question is really based on non-application of mind.

The question no.(h) appears to have some substance in it. The learned Tribunal has deleted the disallowance following its judgement for the earlier years. But no finding was arrived at by the learned Tribunal indicating that the borrowed capital was not utilized for the purpose of earning exempt income. In the absence of such a finding the disallowance could not have been deleted. Therefore, to that extent, the judgement of the learned Tribunal is set aside and the matter is remanded to the assessing officer. He shall give an opportunity to the assessee to adduce evidence to show what amount of interest, if any, was incurred for the purpose of earning exempt income. Based on the evidence, he shall arrive at a finding in accordance with law.

The question no. (i) is again an outcome of non-application of mind because the order for payment of mesne profits attained finality on 30th July, 1999. Therefore, the same can only be assessable in the year 2000-2001. The

learned Tribunal did the correct thing. But the appellant has framed the question without applying any mind.

The question no.(j) is equally an outcome of non-application of mind. The immovable property has partly been let out and there were other properties rented by the assessee for the purpose of its business.

The learned Tribunal advanced the following reasoning amongst others:-

“However, the A.O. has presumed that no expenditure at all was incurred by the appellant in relation to such leased properties but incurred the expenditure only in respect of own property at 4, Mangoe Lane, Kolkata. On the facts of the case therefore, we are of the opinion that the assumption made by the A.O. are not proper and correct. If the appellant had incurred over Rs.65 lakhs towards repairs in respect of property from which rental income of mere Rs.34.97 lakhs was earned, then it was wrong on the part of the A.O. to assume that the expenditure of Rs.1,28,95,000.00 pertained to one property alone and no expenditure was incurred in relation to lease properties from which rent of over Rs.105 lakhs was earned. We, therefore, agree with contention of the A/R that the disallowance was made merely on surmise. Keeping in mind the above factual position and also the past history as referred by the assessment orders for earlier years, we direct the A.O. to disallow only Rs.39,43,031/- from the business income as against Rs.77,37,000/- as disallowed in the order of assessment. Ground No.11 is therefore allowed”.

The view taken by the learned Tribunal is evidently a possible view and no reason is forthcoming why is the same perverse.

We have, thus, examined the entire matter in the absence of the learned advocate for the appellant with the active assistance of Mr. Bajoria, learned Senior Advocate ably assisted by Mr. Gupta.

The appeal is partly admitted and also allowed as indicated above.

The exercise occasioned by remand shall be carried out at an early date considering the fact that the matter is pretty old.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)