IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 28 of 1994

DATE OF DECISION: December 21, 2007

The Commissioner of Income-tax (Central), Ludhiana

…Applicant

Versus

M/s Hero Cycles (P) Ltd., Ludhiana.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Sanjiv Bansal, Advocate, for the applicant-revenue.

Mr. Akshay Bhan, Advocate, for the respondent-assessee.

M.M. KUMAR, J.

At the instance of the revenue, the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh (for brevity, 'the Tribunal'), while exercising jurisdiction under Section 256(1) of the Income-tax Act, 1961 (for brevity, 'the Act'), has referred the following questions of law, which are claimed to have arisen from order dated 22.4.1993, passed in I.T.A. No. 125/Chandi/1988, in respect of assessment year 1982-83:-

"1. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in allowing weighted deduction under section 35B on commission paid to the parties in India?

2. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal is right in law in holding that provisions of Rule 6AA which came on the statute book w.e.f. 1.8.1981 were applicable to the pending assessments pertaining to the previous years ending before the date of operation of the provisions?

3. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that Rule 6B is not applicable to expenditure on gifts made to dealers in excess of Rs. 50/- each, on the assumption that these did not bear the name and logo of the assessee company?

4. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in holding that lodging expenses are not in the nature of entertainment expenses?

5. Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in law in allowing full triple shift allowance on machinery ignoring the fact that the machinery did not work for triple shift during the entire period of the previous year?"

At the outset it is appropriate to notice that learned counsel for the applicant-revenue has confined his arguments to Question No. 4 only and did not press the other questions of law, which have been referred by the Tribunal for opinion of this Court.

Question No. 4 pertains to the controversy whether lodging expenses are in the nature of entertainment or not. In that regard, the respondent-assessee has claimed deduction of dealers' board and lodging expenses of Rs. 6,997/-. Other than this, deduction of lodging expenses and boarding expenses to the tune of Rs. 16,009/- and Rs. 11,204/- respectively was also claimed out of export promotion expenses. The Assessing Officer held these expenses relating to hospitality and disallowed the same to be considered as entertainment expenses. The view of the Assessing Officer has been upheld by the CIT (A). On further appeal before the Tribunal, it has been held that boarding expenses partakes the character of hospitality and, thus, has been rightly disallowed. Regarding lodging expenses of Rs. 4,100/- out of composite amount of Rs. 6,997/-, under the head "dealers' boarding and lodging expenses" and the amount of Rs. 16,009/- out of export promotion expenses, the Tribunal has held that these expenses were not in the nature of entertainment expenses but were business expenses, which had to be allowed as a deduction.

Learned counsel for the applicant-revenue has argued that Question No. 4 has already been decided by this Court in favour of the revenue and against the assessee by a Division Bench of this Court in the case of **M/s Avon Cycles (P) Limited, Ludhiana v. The Commissioner of Income Tax (Central) Ludhiana (I.T.R. Nos. 38**

and 39 of 1989, decided on 22.12.2006), wherein a similar question of law came up for consideration besides others. The Division Bench while referring another judgment of this Court in **ITR Nos. 26 to 29 of 1989 (The Commissioner of Income Tax, Patiala v. Shri Ved Parkash Aggarwal, Ludhiana)**, answered the question in favour of the revenue and against the assessee. Learned counsel for the respondent-assessee has not been able to controvert the aforementioned argument. He has also not cited any other judgment of either Hon'ble the Supreme Court, this Court or any other High Court wherein any contrary view is taken.

In view of above, Question No. 4 is answered in favour of the applicant-revenue and against the respondent-assessee in terms of Division Bench judgments of this Court in the cases of M/s Avon Cycles (P) Limited (supra) and Shri Ved Parkash Aggarwal (supra). Other questions since have not been pressed by the learned counsel for the applicant-revenue, therefore, they are returned unanswered.

(M.M. KUMAR)
JUDGE

(RAKESH KUMAR JAIN)
JUDGE

December 21, 2007
Pkapoor