

Court No. - 3

- (1) **Case :-** INCOME TAX APPEAL No. - 1 of 2015
Appellant :- M/S Scooters India Ltd., Lucknow through Authorised Signatory
Respondent :- Commissioner Of Income Tax-II, Ashok Marg Lucknow and another
Counsel for Appellant :- Pradeep Agrawal
Counsel for Respondent :- Manish Mishra
- (2) **Case :-** INCOME TAX APPEAL No. - 2 of 2015
Appellant :- M/S Scooters India Ltd. Lucknow through Authorised Signatory
Respondent :- Commissioner of Income Tax-II, Ashok Marg Lucknow and another
Counsel for Appellant :- Pradeep Agrawal
Counsel for Respondent :- Manish Mishra

Hon'ble Sudhir Agarwal, J.
Hon'ble Anant Kumar, J.

1. Heard Sri Pradeep Agrawal, Advocate, for appellant and Sri Manish Misra, Advocate, for respondent-Revenue.
2. These two appeals have arisen from common judgment and order dated 21.08.2014 passed by Income Tax Appellate Tribunal, Lucknow Bench, Lucknow (hereinafter referred to as "Tribunal") and has been filed under Section 260A of Income Tax Act, 1961 (hereinafter referred to as "Act, 1961") by Assessee. The details of year of assessment, number of appeal before Tribunal in the appeals before this Court are as under:

Sl.No.	I.T.A. Number	Assessment Year	ITA Number before Tribunal
1	1 of 2015	2002-03	86/LKW/2011 and 58/LKW/2011
2	2 of 2015	2003-04	87/LKW/2011 59/LKW/2011

3. I.T.A. No. 1 of 2015 has raised following seven substantial questions of law:

(i) Whether Tribunal was justified in adding to the income, the grant from the Government of India out of National Renewable Fund for implementation of Voluntary Retirement Scheme amounting to Rs. 1,14,89,040/-.

(ii) Whether the Tribunal was justified on facts or in law in allowing 1/5th of VRS payment of Rs. 1,35,47,324/- i.e. Rs. 27,09,465/- in view of the provision of Section 35DDA of Act, 1961 as against the amount of Rs. 4,11,657 as determined by Appellant and on the other hand the VRS expenses debited by the Appellant in the profit and loss account at Rs. 1,14,89,040/- were added back to the income of Appellant.

(iii) Whether Tribunal was justified in overlooking the provisions of Section 43B relating to disallowance of Rs. 1,40,57,860/- on account of payment of gratuity paid under the scheme of LIC but disallowed the said amount by invoking the provisions of Section 40A(7) of the Act, 1961.

(iv) Whether Tribunal was justified in not considering the fact that premium paid by Appellant to LIC was under a scheme known as 'Group Gratuity Scheme' formed by LIC and the insurance premium paid under the said scheme is treated as a deductible business expense of the Company.

(v) Whether Tribunal was justified in relaying upon a decision of this Court which was decided on ex-parte basis and the decision of Madras High Court in the case of Commissioner of Income Tax vs. Textools Co. Ltd. was not considered.

(vi) Whether the Tribunal was justified in not considering the fact that a bare reading of Section 36(1)(v) of the Act, 1961 clearly shows that real intention behind the provision is that employer should not have any control over the funds of irrevocable trust created exclusively for the benefit of the employees and thus the condition is satisfied and the deduction

is allowable.

(vii) Whether Tribunal was justified in not considering the decision of Apex Court in Commissioner of Income Tax Vs. Textools Col. Ltd. (2013) 216 Taxman 327 wherein Apex Court has considered its earlier decision in the case of Shree Sajjan Mills Ltd. Vs. CIT, wherein it has been held that the condition of Section 36(1)(v) of Act, 1961 stands satisfied if the employer does not have any control over the funds of the irrevocable trust created exclusively for the benefit of employees.

4. In Income Tax Appeal No. 2 of 2015, Questions- (iii), (iv), (v), (vi) and (vii) are involved and only difference is with regard to amount of disallowance under Question-(iii). Questions-(i) and (ii) are not involved in I.T.A. No. 2 of 2015.

5. Before adjudicating the aforesaid questions, brief factual matrix would be appropriate to understand the dispute.

6. Assessee, M/s Scooter India Limited, is a Company registered under Company Act, 1956 (hereinafter referred to as "Act, 1956") owned by Government of India. It manufactures and markets three-wheelers having its manufacturing unit at Lucknow. For the Assessment Year 2002-03 Assessee furnished return on 31.10.2002 showing income at Rs. 2,51,25,472/- for the current year and setting up part of brought forward losses against aforesaid income. Assessing Officer (hereinafter referred to as "AO") processed return under Section 143(1) of Act, 1961 on 18.12.2003 but subsequently case was selected for scrutiny. A Notice under Section 143(2) was issued on 14.10.2003. In compliance of aforesaid notice, Authorized Representative of Assessee appeared before AO and filed its power of attorney. During the assessment proceedings, Assessee revised return several times. On 31.10.2003 original Return of income was revised showing income of Rs. 2,38,52,387/- wherein deduction under Section 80O at Rs. 12,73,085/- was claimed. Computation of income was

revised on 21.08.2004 wherein the excess provision written back at Rs. 47,05,659/- and deduction under Section 80O (20 percent) on Rs. 63,65,425/- was claimed. Income was revised to Rs. 1,91,46,728/-. Again computation was revised on 05.11.2004 and income was revised to Rs. 1,44,34,799/-. Assessment order ultimately was passed on 24.01.2005 computing total income of Assessee as Rs. 2,26,11,021/-. Though AO made additions in different heads but we are concerned for the purpose of this appeal with the expenditure of Voluntary Retirement Scheme (hereinafter referred to as "VRS") in respect where to AO considered deduction under Section 35DDA. Another aspect is gratuity amount of Rs. 1,40,57,860/- which was disallowed.

7. In ITA No. 2 of 2015, the basic question relates to disallowance towards payment of gratuity. On the question of expenditure on account of VRS and payment of gratuity, Assessee lost the matter in Appeal before Commissioner who confirmed Assessment Order on the aforesaid two aspects vide appellate order dated 31.08.2010 and Tribunal vide impugned order.

8. It is an admitted fact from record that Assessee was sick unit and implementing revival/rehabilitation approved by Board of Industrial and Financial Reconstruction (hereinafter referred to as "BIFR"). Government of India remitted grant out of National Renewal Fund for implementation of VRS. Payment was made by Assessee to employees towards VRS out of the said grant. AO considered amount of grant as income of Assessee. The aforesaid amount received from Government of India was 1,14,89,040/-. The actual expenditure on VRS was Rs. 1,35,47,324/-. AO has given following reasons to treat the aforesaid grant as "income" of Assessee and not allowing expenditure incurred by Assessee on VRS i.e. Rs. 13547324/-. The expenditure was disallowed and allowed to be written off in five equal installments as per Section 35DDA. Thus actual deduction was

allowed to the extent of Rs. 27,09,464/- and entire amount received as grant from Government of India was added as income of Assessee. Therefore Questions-(i) and (ii) will depend on the fact whether grant received by Assessee from Government of India can be treated to be "income" or not.

9. The term "income" is defined in Section 2(24) and "total income" in Section 2(25) of Act, 1961. It cannot be treated to be Income at all. Hence question treating it to be part of total income would not arise. The definition of "income" is inclusive and not exhaustive.

10. In **CIT Vs. Karthikeyan 1993 (201) ITR 866 (SC)**, Court held that the purpose of inclusive definition is not to limit the meaning but to widen its net. Several clauses in the definition are not exhaustive of the meaning of income; even if a receipt did not fall within the ambit of any of clauses, it might still be "income" if it partakes the nature of "income".

11. In **Emil Webber Vs. Commissioner of Income Tax, V & M, Nagpur 1993 (200) ITR 483 (SC)**, Court said; though inclusive definition adds several artificial categories to the concept of "income" but, on that account, the expression "income" will not lose its natural connotation.

12. We may take help of another provision of Act, 1961 i.e. Section 14 which places "all income" under Act, 1961 in five categories unless provided otherwise. The following are heads of income:

(i) Salaries; (ii) income from house property; (iii) profits and gains of business or profession; (iv) capital gains; and (v) income from other sources.

13. Obviously, heads salary, property, business or profession and capital gains would not cover the amount of "grant" which is also termed as "subsidy" received out of a fund created for implementing VRS scheme to help Public Enterprises who have become sick and are

in the process of revival.

14. The question, then would be whether it can be placed in the residuary category, i.e., "other sources". This word "source" came up for consideration before Privy Council in **Rhodesia Metals Ltd. Vs. Commrs of Taxes 1941 (9) ITR Supp. 45 (PC)**. It was observed that the word "source" indicates a thing from which something originates or from which something rises. Source thus is an originating cause. Source is not, in the context under discussion, a legal concept, but is something which a particular man would regard as a real source of income to be ascertained as hard matter of fact.

15. In **Commissioner of Income Tax Vs. Shaw Wallace and Company AIR 1932 PC 138** Privy Council observed that "income" connotes a periodical monetary return "coming in" with some kind of regularity, or expected regularity, from definite sources.

16. In **Venkataswami Naidu and Co. Vs. Commissioner of Income Tax 1959 (35) ITR 594 (SC)** Court said that "income" is not necessarily recurrent return from a definite source, though it is generally of that character.

17. The judgment in **Commissioner of Income Tax Vs. Shaw Wallace and Company (supra)** was referred to and followed in **Senairam Doongarmall vs. Commissioner of Income Tax, Assam 1961 (42) ITR 392 (SC)** wherein compensation received was not held "income" observing that source has been sterilized. The observations in **Commissioner of Income Tax Vs. Shaw Wallace and Company (supra)** were also reiterated in **Divecha Vs. CIT 1963 (48) ITR 222**.

18. An accidental or casual receipt was not held income by Madras High Court in **CIT Vs. Ramalakshmi Reddy 1981 (131) ITR 415 (Mad)**.

19. In another judgment, Madras High Court in **CIT Vs. Rajalakshmi Venkatakrishnan 1995 (215) ITR 596 (Mad)** observed that gratuitous payment of annuity received by widow of ex-employee

is not "income" since the same is not contractual but only discretionary.

20. In **Padmaraje R. Kadambande Vs. CIT 1992 (195) ITR 877 (SC)**, a discretionary payment received by Assessee under Bombay Merged Territories Miscellaneous Alienation Act, 1955 on compassionate ground was held to be capital in nature and not taxable.

21. In **Commissioner of Income Tax, Patiala Vs. Groz-beckert Saboo Ltd. 1979 (116) ITR 125 (SC)** a voluntary contribution was held as wanting of character of "income".

22. In the case in hand grant/subsidy was forwarded by Government of India to help Assessee in its revival by making payment to employees towards VRS. It was a voluntary remittance fund by Government of India to Assessee. Despite our repeated query learned counsel appearing for appellant could not show anything so as to bring 'grant' or 'subsidy' same within any particular clause of Section 2 (24) of Act, 1961.

23. We may also place on record that a Sub-clause (xviii) has been inserted in Section 2(24) by Finance Act, 2015 with effect from 01.04.2016 which deals with certain kind of subsidy or grant or cash incentive etc. by Government of India or State Government but that clause has no application in the present case.

24. In view thereof, we answer Questions-(i) and (ii) both in favour of Assessee and against Revenue holding that amount of grant received by Assessee from Government of India could not have been treated as "income" and that being so, addition made by AO of amount of grant and upheld by Commissioner and Tribunal is not in accordance with law. Both these Questions are answered in favour of Assessee.

25. Now coming to Questions- (iii), (iv), (v), (vi) and (vii), learned counsels for parties, at the outset, could not dispute that these questions stand covered by Supreme Court's judgment in **CIT Vs.**

Textool Co. Ltd. 2013 (216) Taxman 327 in favour of Assessee. Tribunal had disallowed payment made to L.I.C. under Gratuity Insurance Scheme by referring to Section 40(A)(vii) observing that fund was not recognized by Department. A similar question was considered in **CIT Vs. Textool Co. Ltd. (supra)** where also payment was made to L.I.C. towards group life assurance scheme and this was held to be an approved Scheme and there was no violation of Section 36(1)(v) of Act, 1961. Court held that a narrow interpretation straining language of Sub-Clause (v) so as to deny deduction to Assessee should not be followed since the objective of fund was achieved. Para-8 of judgment is reproduced as under:

"8. Having considered the matter in the light of the background facts, we are of the opinion that there is no merit in the appeal. True that a fiscal statute is to be construed strictly and nothing should be added or subtracted to the language employed in the Section, yet a strict construction of a provision does not rule out the application of the principles of reasonable construction to give effect to the purpose and intention of any particular provision of the Act. (See : Shree Sajjan Mills Ltd. v. CIT [1985] 156 ITR 585/23 Taxman 37 (SC). From a bare reading of Section 36(1)(v) of the Act, it is manifest that the real intention behind the provision is that the employer should not have any control over the funds of the irrevocable trust created exclusively for the benefit of the employees. In the instant case, it is evident from the findings recorded by the Commissioner and affirmed by the Tribunal that the assessee had absolutely no control over the fund created by the LIC for the benefit of the employees of the assessee and further all the contribution made by the assessee in the said fund ultimately came back to the Textool Employees Gratuity Fund, approved by the Commissioner with effect from the following previous year.

Thus, the conditions stipulated in Section 36(1)(v) of the Act were satisfied. Having regard to the facts found by the Commissioner and affirmed by the Tribunal, no fault can be found with the opinion expressed by the High Court, warranting our interference."

26. In view thereof, we answer Questions- (iii) to (vii) in favour of Assessee and against Revenue. Both these appeals are allowed and impugned judgment of Tribunal dated 21.08.2014 to the extent aforesaid questions have been answered in favour of Assessee, is hereby set aside.

27. Consequences shall follow.

Dt. 15.02.2017

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