

CTR ENCYCLOPAEDIA ON INDIAN TAX LAWS

COMMISSIONER OF INCOME TAX vs. UDAIPUR DISTILLARY CO. LTD.

SUPREME COURT OF INDIA

Dr. Arijit Pasayat & Dr. Mukundakam Sharma, JJ.

Civil Appeal No. 3512 of 2007

8th May, 2009

(2009) 77 CCH 0458 ISCC

(2009) 224 CTR 0032 : (2009) 23 DTR 0138 : (2009) 314 ITR 0188 : (2009) 180 TAXMAN 0530

Legislation Referred to

Section 37(1)

Case pertains to

Asst. Year 1991-92, 1992-93, 1994-95

Decision in favour of:

Assessee

Business expenditure—Allowability—Payment of technical service charges under new agreement—Though the payments made by the assessee under the new agreement in the two years are more than what would have fallen due under the original agreement, the payments made in the subsequent years are far less than the amount that the assessee was required to pay as per the old agreement—Tribunal and the High Court have recorded a finding that the new agreement was not a subterfuge or clandestine device to reduce the tax liability but was based on commercial consideration and the expenditure was incurred on business expediency—This is essentially a finding of fact—There being no infirmity in the findings of the Tribunal and the High Court, no interference is warranted

(Para 5)

Conclusion :

In the absence of any infirmity in the finding of fact recorded by the Tribunal and the High Court that the new agreement for securing technical services was not a subterfuge or clandestine device to reduce the tax liability of the assessee but was based on commercial consideration and the expenditure was incurred by the assessee on business expediency, no interference is warranted.

In favour of :

Assessee

DR. ARIJIT PASAYAT, J.**JUDGMENT**

Questioning correctness of the judgment rendered by a Division Bench of the Rajasthan High Court at Jodhpur this appeal has been filed.

2. The questions raised before this Court are as follows :

"1. Whether the High Court is right in laws and on the facts of the case in dismissing the appeal of the Revenue ?

2. Whether the High Court has failed to consider the following substantial questions of law :

(A) Whether on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 5,51,262 by holding that unpaid amount of bottling fee has, on furnishing of bank guarantee to be treated as actual payment and accordingly the deduction in respect of the same cannot be denied under s. 43B of the IT Act, 1961 ?

(B) Whether in the facts and in the circumstances of the case, the Tribunal was justified in law in deleting the addition of Rs. 38,442 made by the AO on account of disallowance of research and development expenses not covered under s. 35(1)(iv) of the IT Act, 1961 by wrongly relying on the decision in ITA No. 1546/Jp/1995, dt. 30th March, 2001 ?

(C) Whether in the facts and in the circumstances of the case, the Division Bench of the High Court was justified in law in affirming the findings of the Tribunal allowing the depreciation on research and development assets which related to the closed business of Fast Food Division/Unit of the assessee company as such not used during the previous year ?

(D) Whether in the facts and in the circumstances of the case, the Division Bench of the High Court was justified in affirming the findings of Tribunal deleting the disallowance of Rs. 14,51,100 holding that the technical service charges (royalty) payment under consideration is allowable based on subsequent agreement dt. 10th April, 1992 at higher rate than that based on earlier agreement entered into in December, 1990 even though earlier agreement entered into in December, 1990 was to be effective upto 2000 and had neither been substituted nor rescinded ?"

3. The question raised before the High Court are same as raised for asst. yrs. 1991-92 and 1992-93.

4. The dispute in essence related to the applicability of s. 43B of the IT Act, 1961 (in short the 'Act'). The High Court held that the said provision has no application.

5. The dispute relates to the asst. yr. 1994-95. In addition to the issues which are common to asst. yr. 1991-92, 1992-93 which are the subject-matter in Civil Appeal No. 3511 of 2007 [reported as CIT vs. McDowell & Co. Ltd. (2009) 224 CTR (SC) 22—Ed.] and Civil Appeal No. 2939 of 2006 [reported as CIT vs. McDowell & Co. Ltd. (2009) 224 CTR (SC) 24—Ed.], our answers to the questions given in relation to s. 43B and depreciation on research and development machinery and replacement of transformers shall apply to the facts of the present case also. The additional issue here relates to technical service charges. According to learned counsel for the Revenue the principles of novation are applicable here and there was no commercial expediency for entering into a fresh contract and there is no financial benefit. We find that the High Court has noted that it is not the case of the Revenue that the assessee

has not actually paid Rs. 30 lacs to McDowell. It is pointed out that though in two years the payments made under the new agreement were more than what would have fallen due under the original agreement but for the subsequent years' transactions, the business expediency claim of the assessee proved to be right. It has been noticed that for the asst. yr. 1995-96 under the old agreement, the assessee would have been required to pay Rs. 45.56 lacs towards technical service charges to McDowell and during the asst. yr. 1996-97 it would have been required to pay Rs. 107.323 lacs as per the old agreement whereas the assessee has during these two years paid Rs. 30 lacs for each year. The Tribunal and the High Court recorded a finding that the new agreement in April, 1992 was not a subterfuge or clandestine device to reduce the tax liability but was an expenditure incurred on business expediency and the decision of the parties to enter into an agreement was based on commercial consideration. The finding is essentially a finding of fact based on cogent assessment of the factual scenario. We find nothing infirm in the decision of the Tribunal and the High Court to warrant interference. The challenge of the Revenue on that ground fails.

6. The appeal is disposed of.

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