

**SUPREME COURT OF INDIA**

Commnr. of Income Tax, Udaipur

Vs.

Mcdowell & Co. Ltd.

C.A.No.2939 of 2006

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

08.05.2009

**JUDGEMENT**

**Dr.Arijit Pasayat, J.**

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

“The questions raised before the High Court are as follows:

(1) Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in holding that the unpaid amount of bottling fee has, on furnishing of the bank guarantee, to be treated as actual payment and accordingly allowing the deduction in respect of the same under Section 43B of the Act, even though the sum has not been actually paid before the due date of filing the return under Section 139(1) of the Act.

(2) Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in allowing the depreciation on research & 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?

(3) Whether on the facts and in the circumstances of the case, the I.T.A.T. was justified in deleting the addition of Rs.2,77,887/- being made treating the expenditure incurred in purchase of new transformer as capital expenditure even when the old transformer still exists in the blocks of asset and not sold, discarded or demolished or destroyed?”

2. The dispute in essence related to the applicability of Section 43B of the *Income Tax Act, 1961* (in short the `Act') The High Court held that the provision has no application.

3. The dispute relates to the assessment year 1992-93. So far as the first two questions are concerned, we have dealt with the issues in Civil Appeal No.3511 of 2007 relating to the assessment year 1991-92. Therefore, the answers given in respect of those questions shall apply so far as the present assessment year is concerned.

4. The last question relates to the nature of expenditure in purchase of new transformers. According to the revenue, the expenditure incurred is in the nature of capital expenditure when the old transformers are still included in the block of assets and not sold or discarded or demolished or destroyed.

5. Learned counsel for the revenue placed strong reliance on *Commissioner of Income Tax, Madurai and Ors. v. Saravana Spinnig Mills (P) Ltd.*<sup>1</sup>. It was highlighted that in *Liquidators of Pursa Ltd. v. Commissioner of Income Tax, Bihar*<sup>2</sup>, it was held that the test is whether it is actually used.

6. Learned counsel for the assessee on the other hand submitted that the Saravana's case (supra) related to a case under Section 31, obviously relatable to current repairs. The assessee's claim on the other hand is relatable to Section 37 of the Act. Strong reliance is placed on a decision of this Court in *Commissioner of Income Tax v. Ramaraju Surgical Cotton Mills*<sup>3</sup>. It is fairly accepted by learned counsel for the assessee that nomenclature in respect of the claim made is not really relevant, and what is relevant, is the nature of the transaction and the expenditure made. Since neither the Tribunal nor the High Court dealt with the factual aspect in detail, we remit the matter to the Assessing Officer to consider the respective stands in the background of what has been stated by this Court in Saravana and Ramaraju cases (supra).

7. The appeal is accordingly disposed of.

<sup>1</sup>(2007 (7) SCC 298)

<sup>2</sup>(1954 (25) ITR 265)

<sup>3</sup>((2007)(294) ITR 328 (SC))