

SUPREME COURT OF INDIA

Commissioner of Income Tax, Udaipur Rajasthan

Vs.

Mcdowell & Co. Ltd.

C.A.No.3472 of 2007

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

08.05.2009

JUDGMENT

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.

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

“1. Whether the unpaid amount of Rs.12,67,656/- furnishing of bank guarantee could be allowed as a deduction under Section 43B of the IT Act, 1961?

2. Whether the furnishing of bank guarantee can be treated as actual payment for the purpose of Section 43B of the *IT Act, 1961*?

3. Whether the High Court erred in law in not following its earlier decision in *Commissioner of Income Tax v. Rajasthan Patrika Ltd. (258 ITR 300)* and thereby holding that furnishing of bank guarantee was actual payment?

4. Whether the bottling fee payable by the assessee and chargeable under the *Rajasthan Excise Act, 1950* and the Rules framed there under being the consideration receivable by the State for parting with its exclusive privilege to deal in potable liquor, was in the nature of any sum payable by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force had to be actually paid in cash or by cheque for claiming deduction under Section 43B of the IT Act, 1961? 2. The questions raised before the High Court are as follows:

(1) Whether on the facts and in the circumstances of the case the ITAT was justified in deleting the addition of Rs. 12,67,656/- 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 U/s. 43B of the

Income-tax Act, 1961? (2) Whether on the facts and in the circumstances of the case the ITAT was justified in deleting the addition of Rs. 38,442/- made by the Assessing Officer on account of disallowance of Research and Development expenses not covered U/s. 35(1)(iv) of the Income-tax Act, by wrongly relying on the decision in ITA No.1546/JP/95 dated 30.03.2001? (3) Whether on the facts and in the circumstances the ITAT is justified in allowing the depreciation on research & Development assets which related to the closed business of Fast Food Division/unit of the assessee company and as such not used during the previous year?"

(4) Whether in the facts and circumstances of the case bottling fees chargeable from the assessee under the Rajasthan Excise Act, 1950 and interest chargeable on late payment of bottling fees amount to tax, duty, cess or fees within the meaning of section 43B of I.T. Act, 1961 so as to attract the said provisions while considering allowability of deduction of such expenses?

3. The dispute relates to assessment year 1995-96. First 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 provision has no application.

4. The said issue in the present appeal is revolving round the applicability of Section 43B of the Act. In view of our decision in Civil Appeal No.3471 of 2007 relating to the assessment year 1988-89 which has been disposed of today, the said issue is answered in favour of the assessee and against the revenue.

5. So far as the second issued is concerned in Civil Appeal No.3511 of 2007 relating to assessment year 1991-92 and Civil Appeal no.3473 of 2007 relating to the assessment year 1993-94, matter has been remitted to the Assessing Officer for factual adjudication of the rival stands. Similar direction is given in the present case.

6. The appeal is disposed of accordingly.