

SUPREME COURT OF INDIA

Commissioner of Income Tax, Udaipur Rajasthan

Vs.

Mcdowell & Co. Ltd.

C.A.No.3511 of 2007

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

08.05.2009

JUDEMENT

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 assessment year involved was 1991-92. 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 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 ITAT was justified in allowing the depreciation on research and development assets which related to the closest business of fast food division/unit of the assessee company as such not used during the previous year?”

3. 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 said provision has no application.

4. The High Court following its earlier view in respect of the assessment year 1988-89 held that the amount of bottling fees which remain unpaid did not attract applicability of Section 43B of the Act. The same question has been considered by us in Civil Appeal No.3471 of 2007 disposed of separately today. The view expressed in relation to Section 43B of the Act applies to this case also. The first question has therefore to be decided against the revenue.

5. Coming to the second question, it relates to claim of depreciation on research and development assets. Stand of the revenue is that machinery in respect of R & D centre related to the fast food unit which was closed and therefore the assessee was not entitled to any depreciation because there was no actual user of the machinery.

6. Stand of the assessee on the other hand is that the machinery was used in respect of both the fast food and the liquor units. This aspect needs to be factually examined.

7. We find that the basic issue as to whether it related to both the units or only to fast food unit which is admittedly closed has not been examined in detail. We, therefore, remit the matter to the Assessing Officer to examine this aspect. The assessee shall be permitted to place material in support of its claim that the machinery was used for both the units. If it is established by material that whole or part of the machinery was being used for the liquor unit, whether partly or fully in respect of those machineries, the deduction can be made, as permissible in law otherwise not. The matter is therefore remitted to the assessing officer for doing necessary exercise.

8. The appeal is disposed of accordingly.