

**SUPREME COURT OF INDIA**

Commissioner of Income Tax, Udaipur Rajasthan

Vs.

Udaipur Distillery Co. Ltd., Udaipur

C.A.No.3512 of 2007

(Dr. Arijit Pasayat J.)

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.

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 ITAT 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 section 43B of the IT Act, 1961? B. Whether in the facts and in the circumstances of the case, the ITAT was justified in law in deleting the addition of Rs.38,442/- made by the assessing officer on account of disallowance of research and development expenses not covered under Section 35(1)(iv) of the IT Act, 1961 by wrongly relying on the decision in ITA 1546/JP/95 dated 30.3.2001? 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 ITAT 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 ITAT deleting the disallowance of Rs.14,51,100/- holding that the technical service charges (royalty) payment under consideration is allowable based on subsequent agreement dated 10.4.1992 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earlier agreement entered into in December, 1990 was to be effective upto 2000 and had neither been substituted nor rescinded?”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 assessment years 1991-92 and 1992-93.

4. 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.

5. The dispute relates to the assessment year 1994-95. In addition to the issues which are common to assessment year 1991-92, 1992-93 which are the subject matter in Civil Appeal No.3511 of 2007 and Civil Appeal No.2939 of 2006, our answers to the questions given in relation to Section 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 novatio 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 assessment year 1995-96 under the old agreement, the assessee would have been required to pay Rs.45.56 lacs towards technical services charges to McDowell and during the assessment year 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.