IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.242 OF 1997

The Commissioner of Income-tax,
Bombay City II, Bombay ...Applicant
v/s
M/s Mafatlal Dyes and Chemicals Ltd.,
Bombay ...Respondent

Mr Suresh Kumar for Applicant.
Mr Atul Jasani for Respondent.

CORAM : S.C. DHARMADHIKARI AND
B.P. COLABAWALLA JJ.

Reserved on : 24th July 2014.
Pronounced on : 1st August 2014.

JUDGMENT ***(Per B.P. Colabawalla J.)*** :-

1. By this Income Tax Reference under section 256(1) of the Income Tax Act 1961. The Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal") has referred the following questions of law for the opinion of this Court :-

> *"(A) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the assessee's claim of Rs.5,07,247/- disallowed u/s 40A(8) of the I.T. Act ?*
>
> *(B) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the order of the CIT(A) directing the Assessing Officer to recompute the disallowance under Rule 6D of the I.T. Act on the basis of aggregate trip of each employee and not on the*

basis of each trip undertaken by the employee ?"

2. The Assessment Year in question is 1985-86. As far as Question (A) is concerned, it was the case of the Assessee that the interest paid on deposits ought to be allowed as a deduction under section 80V of the I.T. Act 1961 as the said deposits were primarily obtained for the payment of taxes under the I.T. Act. However, the Assessing Officer rejected the claim for a deduction under section 80V of the Act and instead ordered that 15 % of the interest paid be disallowed under section 40A(8) of the Act. In Appeal, the CIT (Appeals) allowed the claim of the Assessee under section 80V of the Act and the same was also upheld by the Tribunal. Section 80V as it then stood, read as under :-

> *"**Deduction of Interest on moneys borrowed to pay taxes.***
> *80V-- In computing the total income of an assessee, there shall be allowed by way of deduction any interest paid by him in the previous year on any money borrowed for the payment of any tax due from him under this Act."*

The Tribunal, being of the opinion that the aforesaid issue gave rise to a question of law, referred the same for the opinion of this Court.

3. We find that Question (A) referred for our opinion is squarely covered by a judgment of this Court in the case of ***Hindustan Cocoa Products Ltd. v/s Commissioner of Income Tax, reported in [1999] 236 ITR 140.*** In the said judgment, this Court observed that the benefit of section 80V would be available to the Assessee if the borrowings were

taken for the purpose of payment of tax. In view of the factual findings in the present case that the deposits were primarily taken for the payment of taxes, and which are uncontroverted even before us, we are of the view that the ratio of the judgment of this Court in ***Hindustan Cocoa Products Ltd. (supra)*** would sqaurely apply to the facts of the present case. Question (A) is therefore answered in the affirmative, i.e. against the Revenue and in favour of the Assessee.

4. Question (B) really arises on an interpreation of Rule 6D of the Income Tax Rules, 1962 which dealt with expenditure incurred by the Assessee in connection with the travel of an employee. In the present case, the CIT (Appeals) directed the Assessing Officer to recompute disallowance under Rule 6D of the Rules on the basis of the aggregate trips of each employee and not on the basis of each trip undertaken by the said employee. This direction of the CIT (Appeals) was confirmed by the Tribunal.

5. It is common ground before us that even this Question is squarely covered by a judgment of this Court in the case of ***Commissioner of Income Tax v/s AOROW India Ltd., reported in [1998] 229 ITR 325***. The facts as narrated in the said judgement reveal that for the Assessment Year 1983-84, the Assessee had incurred certain expenditure in connection with the travel of its employees including hotel expenses and allowance. The

Income Tax Officer computed the disallowance out of such expenditure under section 37(3) of the Act read with Rule 6D of the Income Tax Rules 1962. Whilst computing the amount of disallowance, the Income Tax Officer took into account the total expenditure incurred by each employee in each trip undertaken by him. The Assessee being aggrieved by this method of computation, preferred an Appeal to the CIT (Appeals). The CIT (Appeals) held that the disallowance under Rule 6D of the I.T. Rules 1962 should be worked out by taking into consideration all the trips (viz. the aggregate) undertaken by the employee during the year together and not on the basis of each trip. The CIT (Appeals) therefore directed the Income Tax Officer to recompute the disallowance accordingly. The Tribunal confirmed the findings of the CIT (Appeals) and therefore the Revenue, under section 256(1) of the Act sought an opinion of this Court on the following question of law :-

> *"(A) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the disallowance under rule 6D should be computed with reference to the total expenditure incurred by an employee or other persons during the entire year and not with reference to the expenditure incurred during each trip separately?"*

After analysing section 37(3) of the I.T. Act 1961 as well as Rule 6D of the I.T. Rules 1962, this Court answered the above question in favour of the Revenue and against the Assessee.

6. In view of the aforesaid judgment and noting that the ratio laid down

therein squarely applies to the facts of the present case, we answer Question (B) in the negative i.e. in favour of the Revenue and against the Assessee.

6. The Reference is accordingly disposed off. No order as to costs.

(B.P. COLABAWALLA J.) **(S.C. DHARMADHIKARI J.)**