Karnataka High Court
Bangalore Soft Drinks (P.) Ltd. vs Commissioner Of Income-Tax on 20 August, 1990
Equivalent citations: 1991 187 ITR 127 KAR, 1991 187 ITR 127 Karn, 1990 (2) KarLJ 385
Author: C Urs
Bench: K Navadgi, M C Urs
JUDGMENT Chandrakantharaj Urs, J.

1. This petition under section 256(2) of the Income-tax Act, 1961, is filed by the assessee aggrieved by the order of the assessing authority, affirmed by the first appellate authority as well as the Tribunal and, having failed to obtain a reference by the Tribunal of the questions of law which arise for consideration as follows :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the provisions of section 37(3A) of the Act were attracted with reference to the advertisement expenditure of Rs. 8,21,354 and, accordingly, the disallowance of Rs. 1,23,202 was in order ?

(2) Whether, on the facts, the Tribunal was right in holding that the industrial undertaking for the manufacture of Torino was not a new industrial undertaking and it was the industrial undertaking in existence since long and, accordingly, the provisions of section 37(3D) of the Act did not become applicable ?"

2. The facts may be stated briefly. They are as follows :

The petitioner-assesse before us is a manufacturer of aerated waters and soft drinks or non-alcoholic beverages of long standing. In regard to the assessment year 1980-81, he claimed total allowance of the amount spent on advertisements of a new product of the assessee company known as "Torino" in the light of having stopped the production of the earlier beverages under the brand names "Cocoa cola" and "Fanta". The amount spent on advertisements is subject to permissible deduction as expenditure in terms of section 37(3A) of the Income-tax Act (hereinafter referred to as "the Act"). That provides initially for a maximum permissible deduction or allowance of Rs. 40,000 and any amount spent in excess thereof is further graduated on a declining scale in terms of the provision, in other words, full allowance is impermissible. But, before the assessing authority, the first appellate authority and the Tribunal, the assessee contended that it had invested large amounts of money on new machinery and capital goods for introducing the new product and, therefore, they fall within the exception provided by sub-section (3D) of section 37 of the Act. A plain reading of sub-section (3D) of section 37, Which is as follows :

"(3D) In a case where an assessee has set up an industrial undertaking for the manufacture or production of any articles, nothing in sub-section (3A) shall apply in respect of any expenditure on advertisement, publicity or sales promotion incurred by the assessee. For the purposes of the business of such undertaking, in the previous year in which such undertaking begins to manufacture or produce such articles and each of the two previous immediately succeeding that previous year."

clearly indicates that the exception in sub-section (3D) from the operation of sub-section (3A) will be available to an undertaking which is new and which otherwise qualifies in terms of the provisions made in sub-section (3D). In a case on hand, that the assessee-company was a well established old company which would not qualify as a new undertaking, is not in dispute. If that is not in dispute, the mere investment on new machinery and capital goods will not entitle an old undertaking to claim to be a new undertaking within the meaning of that expression occurring in sub-section (3D) of section 37 of the Act. Therefore, what has been recorded is a finding of fact and as such disallowance has been upheld by all the authorities before whom the view was canvassed including the Tribunal. In that view of the matter, no question of law arises for consideration which the Tribunal is required to refer to this court under section 256(2) of the Act.

3. Therefore, we reject this petition.