

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 7703-7707 OF 2012

M/S GOODYEAR INDIA LTD.

Appellant(s)

VERSUS

COMMISSIONER OF INCOME TAX, DELHI

Respondent(s)

O R D E R

This appeal takes exception to the judgment and order dated 28.04.2008 passed by the High Court of Delhi at New Delhi in ITA No. 223 of 2005, whereby the appeal filed by the Department was allowed and the issue of deletion of undisclosed income of the assessee answered against the appellant-assessee.

After hearing learned counsel for the parties and perusing the impugned judgment as well as the judgment of the Assessing Officer and the Appellate Tribunal, we find that the Income Tax Appellate Tribunal (for short, "ITAT") had analyzed all the relevant facts, materials and documents to arrive at the conclusion that it was not a case of non-disclosure as assumed by the Department.

That decision was taken up in appeal by the Department before the High Court, which had framed the following question as substantial question of law:

"Whether the Income Tax Appellate Tribunal was correct in law in deleting the undisclosed income of the Assessee as recorded by the Securities and Exchange Commission in USA?"

The High Court, while analyzing the stated question proceeded to reverse the finding of fact recorded by the Appellate Tribunal. For doing so, it recorded following reasons:

"The view taken by the Tribunal is completely unsustainable particularly when the parent company M/s. Goodyear Tyre & Rubber Co., USA made a full disclosure of the amounts kept outside the Assessee's books of account in India without admitting the allegations made against it. Moreover, even the Assessee in India had given two letters wherein it has been mentioned that it is prepared to surrender the amount since it does not want any protracted litigation and prayed that penalty proceedings may not be launched against the Assessee.

In view of the facts which have emerged from the complaint made by the SEC in USA as well as the letters sent by the Assessee to the Income Tax Department in India, there can be no manner of doubt that the Assessee had certain amounts outside its books of accounts which were used for purposes that were not at all legitimate inasmuch as the Assessee was funding foreign trips by Indian government officials and had made payments to the electricity undertaking for assuring continuous power supply to the factory premises of the Assessee."

The High Court essentially placed reliance on two letters written by the assessee and assumed that it was in the form of admission of non-disclosure and an offer was given by the assessee to pay the tax and penalty, as the case may be.

We have perused the two letters which had weighed with the High Court. Our analysis of the said letters is that, they had been in refutal of the allegations contained in the news items which were published around that time, when the communication was sent by the assessee to the Department with an explanation and a without-prejudice offer.

In our opinion, such communication(s) cannot be treated as admission of non-disclosure as such. What is significant to note is

that in the present case, the disclosure is attributed to Goodyear Tyre & Rubber Co., USA, filed by it in the proceedings in USA; and not by the assessee as such. It is not the case of the Department that the amount referred to in the said disclosure has been received in the accounts of the assessee or spent for and on behalf of the appellant - assessee under instruction, so as to be treated as undisclosed income of the appellant.

As aforesaid, the two communications relied upon by the High Court cannot be taken as admission of non-disclosure nor being a case of unconditional offer to pay tax in that behalf. On the other hand, we find that the ITAT had exhaustively analyzed the entire evidence, including the two letters and taken a view which, in our opinion, is a possible view. That being purely a finding of fact, no interference was warranted.

Accordingly, these appeals must succeed and the same are allowed. The impugned judgment of the High Court is set aside and instead the judgment of ITAT is restored. No costs.

Pending applications, if any, stand disposed of.

.....J
(A.M. KHANWILKAR)

.....J
(DINESH MAHESHWARI)

New Delhi
October 16, 2019

ITEM NO.102

COURT NO.8

SECTION XIV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 7703-7707/2012

M/S GOODYEAR INDIA LTD.

Appellant(s)

VERSUS

COMMISSIONER OF INCOME TAX, DELHI

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([AT TOP])

Date : 16-10-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s)

Mr. Ajay Vohra, Sr. Adv.
Ms. Kavita Jha, AOR
Mr. Anant Mann, Adv.

For Respondent(s)

Mr. Sanjay Jain, ASG.
Mr. Arijit Prasad, Sr. Adv.
Mr. Vikrant Yadav, Adv.
Mr. Ashok Panigrahi, Adv.
Mr. Nabab Singh, Adv.
Mrs. Anil Katiyar, Adv.
Mr. B. V. Balaram Das, AOR

UPON hearing the counsel the Court made the following
O R D E R

The Appeals are allowed in terms of the signed order.

Pending applications, if any, stand disposed of.

(DEEPAK SINGH)
COURT MASTER (SH)

(VIDYA NEGI)
COURT MASTER (NSH)

[Signed order is placed on the file]