
(1986) 11 RAJ CK 0016

In the Rajasthan High Court

Case No : Income Tax Reference No. 27 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Aditya Mills

RESPONDENT

Date of Decision : 11-11-1986

Acts Referred:

Income Tax Act, 1961 — Section 37(2B)

Citation : (1986) 11 RAJ CK 0016

Hon'ble Judges : S.N. Bhargava, J;P.C. Jain, J

Bench : Division Bench

Advocate : S.M. Mehta, for the Appellant; N.M. Ranka, for the Respondent

Judgement

Bhargava, J.—The assessee-company runs a textile mill at Kishangarh, District Ajmer. For the assessment year 1972-73, it claimed, inter alia, the following expenses :

Rs.

1. Entertainment expenses incurred in providing tea, cold drinks, etc. 4,826

2. Expenses on guest house maintenance 9,403

14,229

2. The Income Tax Officer disallowed the said expenses. On appeal, the Appellate Assistant Commissioner of Income Tax agreed with the Income Tax Officer. The assessee preferred a further appeal to the Income Tax Appellate Tribunal and the Tribunal allowed the expenses incurred in providing tea, cold drinks, etc., but disallowed the expenses on the maintenance of guest house. The Department preferred an application u/s 256(1) of the Income Tax Act, 1961, before the Tribunal and the Tribunal has referred the following questions for the opinion of this court:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is

right in law in holding that the expenses of Rs. 4,826 incurred by the company in providing tea and cold drinks, etc., to the visitors and customers are not entertainment expenses within the meaning of Section 37(2B) of the Income Tax Act, 1961, and are allowable in computing the total income of the company ?

2. Whether the words "maintenance of guest house" as given in Explanation (ii) to Sub-section (4) of Section 37 include the expenses incurred on running of mess for customers or they include only rent, electricity, water, for its maintenance?"

3. Shri Ranka, learned counsel for the assessee, has placed reliance on *Metharam Lekhumal Vs. Commissioner of Income Tax*, wherein this court, after considering a number of authorities, held that messing expenses were not entertainment expenses and were, therefore, hit by Section 37(2B) of the Income Tax Act, 1961. Learned counsel for the Department has not been able to show any contrary view taken by the Supreme Court or by this court. We are in agreement with the view expressed in *Metharam Lekhumal Vs. Commissioner of Income Tax*, and, therefore, answer question No. 1 in the affirmative and hold that the Tribunal was right in holding that the expenses of Rs. 4,826 incurred in providing tea and cold drinks to the visitors and customers were not entertainment expenses and, therefore, are not hit by the provisions of Section 37(2B) of the Act and were allowable expenses in computing the total income of the company.

4. As regards question No. 2, it may be mentioned that this question was suggested by the assessee in his application before the Tribunal and the Tribunal thought it proper to refer this question as well. But since the application u/s 256(1) of the Act was preferred by the Department for referring question No. 1, the Tribunal was not competent to refer question No. 2 at the instance of the assessee on an application filed by the Department and the reference on that question must be considered to be void. Therefore, we refuse to answer that question.