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**(1997) 07 BOM CK 0050**

**In the Bombay High Court**

**Case No : Income-tax Reference No. 456 of 1995**

Commissioner of Income Tax

APPELLANT

Vs

Aorow India Ltd.

RESPONDENT

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**Date of Decision : 08-07-1997**

**Acts Referred:**

Income Tax Act, 1961 — Section 28, 37(3)

**Citation :** (1997) 143 CTR 116 : (1998) 229 ITR 325 : (1998) 96 TAXMAN 74

**Hon'ble Judges :** Pratibha Upasani, J;B.P. Saraf, J

**Bench :** Division Bench

**Advocate :** Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

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## **Judgement**

B.P. Saraf, J.—By this reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the Revenue, the Income Tax Appellate Tribunal has referred the following question of law to this court for opinion :

"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 ?"

The assessee is a limited company. This reference pertains to the assessment year 1983-84, the relevant previous year being the year ended on June 30, 1982. In its assessment for the above assessment year, the assessee incurred certain expenditure in connection with travelling by its employees including hotel expenses and allowances. The Income Tax Officer computed the disallowance out of such expenditure u/s 37(3) of the Income Tax Act, 1961 ("the Act"), and rule 6D of the Income Tax Rules, 1962 ("the Rules"), at Rs. 22,895. While computing the amount of disallowance u/s 37(3) and rule 6D, the Income Tax Officer took into account the total expenditure incurred by each employee in each trip undertaken by him. The assessee was aggrieved by the method of computation

adopted by the Income Tax Officer as, according to it, he should have computed the amount allowable as deduction u/s 37(3) read with rule 6D by multiplying the per day rates specified in rule 6D with the total number of days spent during the year in travelling. The assessee, therefore, appealed to the Commissioner of Income Tax (Appeals). The case of the assessee before the Commissioner (Appeals) was that the disallowance under rule 6D should be worked out by taking into consideration all the trips undertaken by the employee during the year together and not on the basis of each trip. The Commissioner of Income Tax accepted this contention of the assessee and directed the Income Tax Officer to recompute the disallowance accordingly. The appeal of the Revenue against the above order having been dismissed by the Income Tax Appellate Tribunal, the Revenue is before us for our opinion with this reference from the Tribunal u/s 256(1) of the Act.

We have heard Dr. V. Balasubramanian, learned counsel for the Revenue. We have also heard Mr. Arun Sathe, learned counsel for the assessee. We have perused the order of the Tribunal in this case, as also its earlier order in Income Tax Appeals Nos. 706 and 707 (Bombay) of 1975-76 *Blackie and Sons (India) Ltd. v. ITO* and order dated February 1, 1983, in *S. V. Ghatalia v. Second ITO* [1983] 4 ITD 583 which were followed by the Tribunal. We have perused sub-section (3) of section 37 of the Act which imposes a ceiling on the allowable deduction of expenditure incurred under the heads specified therein including expenditure in connection with travelling by the employees. Sub-section (3) of section 37 reads as follows :

"(3) Notwithstanding anything contained in sub-section (1), any expenditure incurred by an assessee after March 31, 1964, on advertisement or on maintenance of any residential accommodation including any accommodation in the nature of a guest-house or in connection with travelling by an employee or any other person (including hotel expenses or allowances paid in connection with such travelling) shall be allowed only to the extent, and subject to such conditions, if any, as may be prescribed."

The extent of the expenditure incurred by the assessee in connection with the travelling by the employees, etc., for the purpose of business allowable u/s 37(3) and the conditions of allowance have been prescribed by rule 6D. The said rule came into force on August 10, 1966. The expenditure incurred on and after that date would be allowable as a deduction subject to the limits and conditions set out in the said rule. Sub-rule (1) thereof deals with the allowance in respect of expenditure incurred by an assessee in connection with travelling by its employees outside India, whereas sub-rule (2) deals with allowance in respect of expenditure on travelling within India. In this case, the controversy being in respect of expenditure incurred in connection with travelling within India, we are concerned with sub-rule (2) only. Sub-rule (2) read as follows :

"Expenditure in connection with travelling, etc. - ...

(2) The allowance in respect of expenditure incurred by an assessee in connection with travelling by an employee or any other person within India outside the headquarters of such employee or other person for the purposes of the business or profession of the assessee shall not exceed the aggregate of the amounts computed as hereunder :-

(a) in respect of travel by rail, road, waterway or air, the expenditure actually incurred;

(b) in respect of any other expenditure (including hotel expenses or allowances paid), in connection with such travel, an amount calculated at the following rates for the period spent outside such headquarters :-

Provided that if the stay of such employee or other person outside his headquarters is at Bombay, Calcutta or Delhi, the amount computed at the aforesaid rates shall be increased by a sum equal to fifty per cent. of such amount :

Provided further that in a case where such employee or other person on any day of his stay outside his headquarters, stays free of charge in a guest house maintained by the assessee, the amount under this clause shall be calculated at one-third of the aforesaid rates and where the employee or such other person is provided lodging only free of charge, at one-half of the aforesaid rates."

The figures Rs. 80 and Rs. 40 appearing in items (i) and (ii) of clause (b) of sub-rule (2) of rule 6D were substituted by Rs. 100 and Rs. 50 by the Income Tax (Fifth Amendment) Rules, 1975, and by Rs. 150 and Rs. 75, respectively, by the Income Tax (Fourth Amendment) Rules, 1980, with effect from June 18, 1980.

The word "fifty" in the proviso was also substituted for the words "thirty-three and one-third" by the Income Tax (Fourth Amendment) Rules, 1980, with effect from June 18, 1980.

Clause (b) was later substituted by the Income Tax (Eighth Amendment) Rules, 1992, with effect from April 1, 1992, by the following :

"(b) in respect of any other expenditure (including hotel expenses or allowances paid) in connection with such travel, an amount calculated at the following rates for the period spent outside such headquarters :-

(i) where the amount of such expenditure does not exceed Rs. 1,500 per day, the whole of such amount;

(ii) in any other case, Rs. 1,500 as increased by a sum equal to seventy-five per cent. of such expenditure in excess of Rs. 1,500."

It is clear from a plain reading of section 37(3) that the object of this provision is to impose a ceiling on the expenditure incurred by an assessee under the heads specified therein including "expenditure in connection with the travelling by an employee or any other person including hotel expenses or allowances paid in

connection with such travelling". The allowance of such expenditure has been made subject to the limits and conditions prescribed by the rules. Rule 6D has been framed for that purpose. Sub-rule (1) of rule 6D sets out the limits and conditions for allowance of expenditure incurred by the assessee in connection with travelling by an employee or any other person outside India. In this case, there is no controversy about allowance of expenditure incurred in connection with travelling outside India. We are, therefore, not concerned with sub-rule (1) of rule 6D. The controversy in this case is about the allowance of expenditure incurred by the assessee in connection with travelling by the employees within India which is governed by sub-rule (2) of rule 6D which prescribes the ceiling and conditions of the allowability thereof. It provides that the allowance in respect of expenditure incurred by the assessee in connection with travelling by an employee or any other person in India outside the headquarters of the employee shall not exceed the aggregate of the amounts computed in the manner set out in clauses (a) and (b) thereof. Clause (a) deals with the expenditure in respect of travel by rail, road, waterways or air. The actual expenditure incurred by the assessee on such travel is allowable under this clause. Clause (b) deals with the expenditure including hotel expenses and allowances paid by the assessee in connection with such travel and puts a ceiling on the expenditure incurred on that account. Different ceilings have been prescribed in respect of employees whose salary is Rs. 1,000 per month and more and employees whose salary is less than Rs. 1,000 per month. In the case of any person other than an employee of the assessee, the allowable deduction is to be calculated at the rates applicable to the highest paid employee of the assessee. The rates were changed from time to time in respect of the expenditure incurred by an assessee after a particular date in a particular assessment year. As a result, in such assessment years, the calculation of allowable expenditure will have to be made at different rates for travelling during the same year. Take for instance, the previous year ending March 31, 1981. In that year, the rates were modified with effect from June 18, 1980. As a result, the allowable expenditure out of the expenditure incurred by the assessee before that date will have to be calculated at the old rates and allowable expenditure out of the expenditure incurred on and after June 18, 1980, at the modified rates. Clause (b) of rule 6D(2) thus prescribes the maximum amount allowable per day as expenditure (including hotel expenses or allowances paid) in connection with travel (other than expenditure in respect of travel, which is allowable in full under clause (a)). The expression used is "per day or part thereof". The per day rate gets increased by virtue of the first proviso thereto by the percentage set out therein, if the stay of the employee outside his headquarters happens to be at Bombay, Calcutta or Delhi. It is further provided in second proviso that in case the employee stays free of charge in a guest house maintained by the assessee, the amount specified in clause (b) should be calculated at one-third of the rates prescribed therein and where he is provided lodging only free of charge, at one-half of the said rates. Under the substituted rule also, the scheme remains the same, except that the calculation has been

made simple. The ceiling per day is no more dependent on the salary of the employee or the place of stay. Now, up to Rs. 1,500 per day, the allowance would be 100 per cent., and in excess of Rs. 1,500 per day, Rs. 1,500 plus 75 per cent. of the expenditure in excess of Rs. 1,500 per day.

On a careful reading of rule 6D, it is abundantly clear that for the assessment year 1983-84, to which this reference pertains, the expenditure allowable per day under rule 6D(2)(b) has to be calculated with reference to the salary of the employee, the place of stay during the journey (because in case of stay at Bombay, Calcutta and Delhi, the allowable deduction would be higher by thirty-three and one-third per cent., as set out in the first proviso) and also the fact whether the employee was staying free of charge in a guest-house maintained by the assessee or was getting lodging free of charge (because, in that event, the allowance per day would be reduced to one-third or one-half as the case may be). Such a computation is possible only on per day basis or on the basis of a chart containing the following information in respect of each day of the stay of the assessee in connection with his travel :

- (i) the salary of the employee at the time of the journey, whether it was Rs. 1,000 per month or more or less than Rs. 1,000 per month;
- (ii) the place of stay, whether Bombay, Calcutta or Delhi or any other place;
- (iii) whether stayed in a guest house maintained by the assessee free of charge;
- (iv) whether lodging provided free of charge of the assessee.

Based on the above information, the deductible expenditure under clause (b) of sub-rule (2) of rule 6D might vary even for different days of one journey or trip. The ceiling is on the expenditure incurred on each day of the journey by the employee. If the calculation is made in such a manner, it would make no difference whether the allowable deduction is computed for each journey or all the journeys made in the year together. The result would be the same. We asked learned counsel for the assessee how it will make a difference if the allowance is computed on the basis of each trip or journey or all the trips or journeys in the year taken together. Learned counsel fairly conceded that if the calculation is made in the manner indicated above, it would make no difference in the amount deductible u/s 37(3) read with rule 6D. He, however, submitted that such a calculation would be extremely cumbersome and time consuming. In that view of the matter, according to him, the allowable deduction should be calculated by multiplying the maximum prescribed per day rate applicable during the particular year with the total number of days spent by the employee on journey during the year. We find it extremely difficult to accept this contention of learned counsel for the assessee. This submission goes counter to the express terms of clause (b) of sub-rule (2) of rule 6D. u/s 37(3) of the Act read with rule 6D(2)(b) of the Rules, the assessee is entitled to deduction of the expenditure incurred by it in connection with travelling by its employees subject to the ceiling set out in rule 6D(2). Rule 6D deals with expenditure incurred on travel in two clauses, clauses

(a) and (b) of sub-rule (2). Clause (a) provides for allowance of the actual expenditure incurred on travel whether by rail, road, waterways or air. So far as this item is concerned, it will make no difference whether it is calculated journey wise or for all the trips or journeys during the year taken together. So far as other expenses in connection with such travelling including hotel expenses are concerned, clause (b) of sub-rule (2) of rule 6D lays down a ceiling per day, i.e., the maximum expenditure allowable as a deduction per day on that account. If the actual expenditure incurred on a particular day is less than the maximum allowable deduction per day, the question of applying the ceiling would not arise. If the expenditure incurred on a particular day is more, it would be restricted to the amount calculated in the manner laid down in clause (b) of sub-rule (2) of rule 6D and the two provisos thereto. The following illustration would make the position clear. Say, in one journey, the employee stayed for two days in a hotel and eight days in a guest-house maintained by the assessee free of charge. The expenditure incurred by him for the stay in hotel for two days might be much more than the maximum allowable amount. The deduction of this expenditure in the hands of the assessee would be restricted to the amount calculated at the rates specified in clauses (i) to (iii) of rule 6D(2)(b). So far as his stay for the remaining eight days in the guest house maintained by the assessee is concerned, the maximum expenditure allowable in the hands of the assessee would be an amount calculated as one-third of the rate prescribed in clause (b) of rule 6D(2). There is thus no scope for applying the maximum rate in all cases without having any regard to the place of stay, type of accommodation, etc. Moreover, the scheme of rule 6D being absolutely clear and unambiguous, the calculation has to be made in accordance with the same. If that is done, the amount allowable as a deduction u/s 37(3) read with rule 6D in a particular year would be the same, no matter whether the calculation is made journey-wise or for all the journeys in the year taken together.

Counsel for the assessee laid great emphasis on the expression "aggregate" appearing in rule 6D(2) and stated that this expression goes to show that the computation of allowance or disallowance should be made for the whole year in respect of each employee. In view of the foregoing discussion, we do not find any merit in this contention. As indicated earlier, what is to be found out by the Assessing Officer is the amount that is allowable as a deduction in respect of the expenditure incurred by the assessee in connection with travelling by its employees. For that purpose, he has to find out the amount allowable as per rule 6D(2) by applying the ceiling set out therein. The word "aggregate" only refers to the aggregate of the expenditure mentioned in two items in rule 6D(2), i.e., the "aggregate" of the expenditure in respect of travel by rail, road, etc., specified in clause (a) and other expenditure falling under clause (b).

It is clear from the above discussion that the ceiling laid down in rule 6D(2) is on the expenditure incurred, in connection with each day of the journey and if the allowable deduction is calculated in accordance with the said rule for each day of travelling, it will make no difference whether the calculation of the allowable

expenditure is made for each trip or journey or for all the journeys in the year taken together. The total allowable expenditure would be the same.

We have also perused the decision of the Tribunal dated October 20, 1976, in *Blackie and Sons (India) Ltd. v. ITO*. The Tribunal in that case considered the question whether the calculation of the allowable expenditure in respect of expenditure on travelling u/s 37(3) read with rule 6D should be worked out with reference to each trip by applying the maximum rate for each day of travelling or with reference to the travelling during the whole year. On perusal of the order of the Tribunal, it is obvious that the Tribunal did not consider the controversy in the proper perspective. As indicated earlier, there is nothing in rule 6D to suggest the calculation of allowable expenditure by multiplying the number of days spent on journey with the per day rate without any regard to the restrictions and conditions set out therein. Rule 6D imposes a ceiling on the aggregate expenditure in connection with the journey in respect of each employee. The aggregate amount allowable in case of travel within the country is to be calculated in the manner set out in clauses (a) and (b) of sub-rule (2). The manner of computation has been discussed by us earlier. The allowance will be restricted to the aggregate of the actual expenditure incurred on travel and a sum not exceeding the specified amount per day calculated in the manner set out in rule 6D(2). The Tribunal, in our opinion, went wrong in deciding the controversy in the manner done by it.

The above interpretation of ours get support from clause (b) of sub-rule (2) of rule 6D as substituted in 1992. Under the substituted clause (b) also, the ceiling is on the expenditure incurred on travelling (other than the expenditure on travel) including hotel expenditure and allowances "per day". If the expenditure does not exceed Rs. 1,500 per day, it is allowable in full. If it exceeds Rs. 1,500, the allowance would be restricted to Rs. 1,500 plus 50 per cent. (75 per cent. ?) of such excess expenditure. This clearly goes to show that the allowance is to be calculated in the light of the actual expenditure incurred "per day".

In view of the above, in our opinion, the Tribunal was not correct in its computation of disallowance u/s 37(3) of the Act read with rule 6D of the rules. The computation has to be made in accordance with rule 6D as illustrated above. The question referred to us is, therefore, answered against the assessee and in favour of the Revenue. The matter is remitted back to the Tribunal to recompute the amount allowable as a deduction u/s 37(3) of the Act read with rule 6D of the rules correctly in the lines indicated above. This reference is disposed of accordingly with no order as to costs.