

(1997) 10 KL CK 0025

In the High Court Of Kerala

Case No : Income-tax Reference No. 39 of 1995

Commissioner of Income Tax

APPELLANT

Vs

Aspinwall and Co. Ltd.

RESPONDENT

Date of Decision : 24-10-1997

Acts Referred:

Income Tax Act, 1961 — Section 37(1)

Citation : (1999) 235 ITR 106

Hon'ble Judges : K.K. Usha, J;G. Sivarajan, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; C.N. Ramachandran Nair, for the Respondent

Judgement

R.K. Usha, J.—This reference, at the instance of the Revenue, arises out of an order of the Income Tax Appellate Tribunal, Cochin Bench, in I. T. A. No. 166 (Coch.) of 1989. The relevant assessment year is 1985-86. Following are the questions raised for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law and fact :

(i) in allowing the foreign travel expenditure of the wife of the executive of the company ?

(ii) in presuming business interest in the foreign trip of the wife of the executive in view of the approval of the company and is not such an approval automatic and disapproval against common place and common sense and the Tribunal is justified in the least in relying on the so-called "approval" ?"

The relevant facts are as follows :

The assessee-company is engaged in the business of curing of coffee, steamer agency, clearing and forwarding agency. For the assessment year 1985-86, the assessee claimed an expenditure of Rs. 2,08,465 on foreign travel which included

Rs. 33,796 incurred on the tour of the wife of the chief executive. The Assessing Officer disallowed Rs. 33,796 holding that the expenditure was incurred for non-business purposes. The Commissioner of Income Tax (Appeals) confirmed the above view. But, on second appeal, the Tribunal limited the disallowance to 50 per cent. of Rs. 33,796.

It is contended by learned standing counsel for the Revenue that the Tribunal has erred in not following the dictum laid down by the Madras High Court in Commissioner of Income Tax Vs. T.S. Hajee Moosa and Company, and the Gujarat High Court in Bombay Mineral Supply Co. P. Ltd. Vs. Commissioner of Income Tax, . The expenditure incurred was in the nature of personal expenses and, therefore, it will not qualify for deduction u/s 37(1) of the Income Tax Act, 1961. The above section provides that any expenditure (not being expenditure of the nature described in Sections 30 - 36 and Section 80W and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession". According to the Revenue, the expenditure incurred for the travel of the wife of the senior executive will not come within the purview of Section 37(1).

2. We heard learned counsel for the respondent also.

3. The Tribunal took the view that the wife of the chief executive accompanied in a business travel and that there was no material to show that her travel was for any purpose other than business. The Tribunal has taken note of the modern trend in which senior executives are accompanied by their wives on visits for business purposes. But, since the visit may have some social aspects also, it took the view that the entire amount cannot be allowed. It was under these circumstances, the Tribunal disallowed fifty per cent. of the amount claimed under this head.

4. The facts in the two decisions relied on by the Revenue are different. In Commissioner of Income Tax Vs. T.S. Hajee Moosa and Company, , the claim of the assessee-firm was for deduction of the expenditure incurred by it on the wife of the senior partner accompanying him on a foreign tour. The definite case of the assessee therein was that the wife of the senior partner had to accompany him for the purpose of attending on him as he was a diabetic. The Madras High Court took the view that the expenditure incurred for the travel of the wife of the senior partner under the above circumstances, was in the nature of personal expenses. Even if it is assumed that the expenditure related to business purpose, it had a dual or twin purpose and served not only purposes of business but also a personal or private purpose and, therefore, it was not an expenditure incurred exclusively to serve the business. In the decision of the Gujarat High Court in Bombay Mineral Supply Co. P. Ltd. Vs. Commissioner of Income Tax, also, the case of the assessee was that since the director of the company, who had to undertake foreign tour, was keeping indifferent health, his wife had to

accompany him. Therefore, the reason for the travel of the wife was to look after her husband, the director. But, in the present case, the factual finding of the Tribunal is to the effect that travel was undertaken by the wife of the senior executive only for the purpose of business. It is also relevant to note that this is a case where the assessee had incurred expenses for the travel of its employee and the wife of the employee, and not the wife of its own partner or director. It was under these circumstances, the Tribunal took the view that when the assessee permitted such travel, in the absence of contrary evidence, it has to be taken that the wife of the chief executive had to undertake the travel for business purpose. On the basis of the above factual finding entered by the Tribunal, we do not find any merit in the contention raised by the Revenue that the Tribunal had committed an error in not following the dictum laid down by the Madras and Gujarat High Courts in the decisions referred to above.

5. We, therefore, answer question No (i) in the affirmative, in favour of the assessee and against the Revenue. We decline to answer question No. (ii), in view of our answer to question No. (i).

6. A copy of this judgment, under the seal of this court and the signature of the Registrar, shall be forwarded to the Income Tax Appellate Tribunal, Cochin Bench.