
(2004) 02 DEL CK 0080

In the Delhi High Court

Case No : IT Ref. No"s. 201 and 202 of 1991

Commissioner of Income Tax

APPELLANT

Vs

Autometer Ltd.

RESPONDENT

Date of Decision : 05-02-2004

Acts Referred:

Citation : (2004) 187 CTR 547 : (2004) 136 TAXMAN 562

Hon'ble Judges : B.C. Patel, C.J.;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sanjiv Khanna and S.C. Sharna, for the Appellant; None, for the Respondent

Judgement

B.C. Patel, C.J.—The Tribunal, Delhi Bench "E", New Delhi, has referred three questions at the instance of Revenue for the asst. yr. 1982-83 arising out of the same assessment, but two different reference applications are there as there was an appeal and a cross-appeal. In IT Ref. No. 201 of 1991, the following two questions are referred :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the expenditure of Rs. 14,500 incurred in connection with the issue of bonus shares was allowable as revenue expenditure.

2. "Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the perquisites of the director-employees of the company had to be considered in accordance with the proviso to Section 40(C) of the IT Act and not in accordance with the provisions of Section 40A(5) of the Act."

While in IT Ref. No. 202 of 1991, the following question is referred:

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that foreign travel expenses incurred in relation to the wife of the managing director of the company amounting to Rs. 24,473 were admissible as business expenditure of the company."

IT Ref. No. 201 of 1991

2. So far as question No. 1, with regard to the expenditure of Rs. 14,500 incurred in connection with the issue of bonus shares, is concerned, the same is now no more debatable in view of the decisions of various Courts and, particularly, the decision in the case of AHMEDABAD MANUFACTURING AND CALICO PVT. LTD. Vs. COMMISSIONER OF INCOME TAX., , wherein the Court has held that the expenditure is not deductible as revenue expenditure and that bonus shares are no different from rights shares. The Supreme Court in the case of Punjab State Industrial Development Corporation Ltd., Chandigarh Vs. Commissioner of Income Tax, Patiala, , considered the question in detail. At page No. 797, the case of Ahmedabad Manufacturing & Calico (P) Ltd. (supra), was also referred to with approval. Ultimately, it held that an expenditure incurred directly for the purpose of expansion of capital asset is in the nature of capital expenditure. Thus, question No. 1 is required to be decided in favor of the Revenue and it is held that it is not allowable as revenue expenditure.

3. So far as question No. 2 is concerned with regard to the applicability of Section 40(c) of the IT Act and Section 40A(5) of the said Act, the Supreme Court has settled the controversy in the year 1993 in the case of Commissioner of Income Tax, Bombay Vs. M/s. Indian Engineering and Commercial Corporation Pvt. Ltd., , the Supreme Court has pointed out that:

"The employees concerned herein also happen to be directors. The provision in Clause (c) of Section 40 applies to directors among others. Of course, Section 40(c) is applicable only to companies whereas Section 40A(5) is applicable to employees whether of companies or others. In the case of directors who are also employees, both the provisions will be attracted; the higher of the two ceilings has to be applied."

In the instant case, benefit has been extended to the maximum limit. Accordingly, question is answered in favor of the assessed and against the Revenue.

IT Ref. No. 202 of 1991

4. So far as the question with regard to the travel expenses incurred in relation to the wife of the managing director of the company, amounting to Rs. 24,473 is concerned, it is required to be decided on facts. However, it is required to be noted that the expenditure should qualify for deduction as contemplated, in Section 37(1) of the Act. One of the requirements of the provisions is that, the expenditure must have been laid out wholly and exclusively for the purpose of business. The Supreme Court in the case of The Commissioner of Income Tax, Bombay Vs. Chandulal Keshavlal and Co., Petlad, , has pointed out that it is for the assessed who claims deductions of the expenditure to satisfy the Department for which the amount is spent.

5. After referring to various decisions a Full Bench of the Kerala High Court in the

case of Ram Bahadur Thakur Ltd. Vs. Commissioner of Income Tax, , after indicating 9 criteria, pointed out that the AO is bound to conduct an enquiry as to whether the assessed satisfies all the requirements of the section before either allowing or rejecting the claim. The officer cannot mechanically either allow the deductions or deny the same. In the instant case, in para 19 of the Tribunal's judgment, the Tribunal has pointed out that on record, relevant extracts of the minutes of the board of director's meeting held on 1st July, 1980, held at 11.00 a.m. was on the record and the relevant portion reads as under:

"It was also suggested that the managing director should be accompanied by Mrs. K.K. Thirani so that social functions could be attended during this tour and cordial relations could be developed."

6. After quoting this para, the Tribunal referred to the decision in the case of (1986) 18 ITD 226 , wherein it was held that the benefit was granted despite the fact that there was no resolution made by the company, but while in the instant case, there was a resolution and the case was considered on a stronger footing for the grant of the benefit. We are of the opinion that, as held in the case of Ram Bahadur Thakur Ltd. v. CIT (supra), where the expenditure was incurred wholly and exclusively for the purpose of trade and business of the assessed is required to be determined and where the assessed seeks to deduct from his or its business profits, certain items of expenditure, the onus of proving that such deductions are permissible is on the assessed. This is particularly so, when the claims are based on facts which are exclusively within the knowledge of the assessed. Thus, it is for the assessed to plead and prove before the authorities that the expenses were incurred wholly and exclusively for the purpose of the business of the assessed.

This exercise has not been undertaken in the present case. However, considering the fact that the amount involved is small and the matter is for the asst. yr. 1982-83, we feel that no interference is called for and refrain from answering the question in the present case.