
(2003) 07 CAL CK 0033

In the Calcutta High Court

Case No : Income-tax Reference No. 15 of 1998

Commissioner of Income Tax

APPELLANT

Vs

Biswanath Tea Co. Ltd.

RESPONDENT

Date of Decision : 23-07-2003

Acts Referred:

Income Tax Act, 1961 — Section 30, 31, 32, 33, 34

Citation : (2003) 185 CTR 488 : (2003) 264 ITR 166 : (2004) 135 TAXMAN 280

Hon'ble Judges : Altamas Kabir, J;Alok Kumar Basu, J

Bench : Division Bench

Advocate : P.K. Mullick and D. Deb, for the Appellant; Debi Prosad Pal and M. Seal, for the Respondent

Judgement

Altamas Kabir, J.—This reference by the Income Tax Appellate Tribunal at the instance of the Commissioner of Income Tax, West Bengal-II, Calcutta, arises out of the order of the Tribunal in I. T. A. No. 1514 (Cal) of 1992, for this court's view on the following question of law :

"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in deleting the disallowance made u/s 37(4), the guest house expenditure without giving any specific finding ?"

2. As will appear from the statement of the case, the Assessing Officer had disallowed a sum of Rs. 9,96,677 on account of guest-house maintenance u/s 37(4) of the Income Tax Act, 1961. Aggrieved thereby, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) on the ground that only a sum of Rs. 4,55,630, which had already been included in the return, had been disallowed u/s 37(4) of the above Act and the amount of Rs. 4,86,631 had not been disallowed u/s 37(4), inasmuch as, the same was allowable under Sections 30 and 31. The Commissioner of Income Tax (Appeals) upheld the Assessing Officer's view and dismissed the appeal. The assessee thereupon moved the Income Tax Appellate Tribunal which following its earlier decision in the assessee's own case for the assessment year 1985-86 and the decision of

this court in the case of Commissioner of Income Tax Vs. Tungabhadra Industries Ltd., : Commissioner of Income Tax Vs. Tungabhadra Industries Ltd., held that the expenditure in respect of repairs amounting to Rs. 4,69,398 and the expenditure in respect of rates and taxes amounting to Rs. 16,133 were allowable as business expenditure.

3. This reference arises out of the said order of the learned Tribunal.

4. Appearing for the Revenue, Mr. Pradyush Mullick, firstly urged that Section 37 of the Income Tax Act, 1961, made a special provision for expenditure not covered by sections 30 to 36 and the non obstante clause in Sub-section (4) of Section 37 of the said Act specifically excluded the special provision made in Sub-section (1) thereof.

5. Referring to the decision of the Supreme Court in the case of General Insurance Corporation of India Vs. Commissioner of Income Tax, Bombay, : General Insurance Corporation of India Vs. Commissioner of Income Tax, Bombay, where the non obstante clause in Section 44 of the Income Tax Act was noted to have an overriding effect over other provisions contained in the Act, Mr. Mullick urged that similarly in the case of Sub-section (4) of Section 37 the non obstante clause would have an overriding effect over both Sub-sections (1) and (3).

6. Mr. Mullick submitted that the question involved in this reference had also fallen for the consideration of this court in Commissioner of Income Tax Vs. Upper Ganges Sugar Mills Ltd., : Commissioner of Income Tax Vs. Upper Ganges Sugar Mills Ltd., and this court had held that the language of Sub-section (4) of Section 37 was quite emphatic and provided that no allowance at all was intended in respect of any expenditure incurred after February 28, 1970, on the maintenance of any residential accommodation in the nature of a guesthouse. It was held further that no allowance of depreciation is also permissible for such guest-house or any assets in such guest-house.

7. Mr. Mullick also referred to an earlier decision in the case of Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Income Tax, , wherein this court had similarly observed that Section 37(4) had been inserted by the Finance Act, 1970, for disallowance altogether of expenditure incurred after February 28, 1970, on the maintenance of guest-houses other than "holiday homes" in computing the profits and gains of business or profession.

8. Mr. Mullick lastly referred to another decision of this court in Britannia Industries Ltd. Vs. Commissioner of Income Tax and Another, : Britannia Industries Ltd. Vs. Commissioner of Income Tax and Another, , where on a reference to the two aforesaid decisions in the Commissioner of Income Tax Vs. Upper Ganges Sugar Mills Ltd., : Commissioner of Income Tax Vs. Upper Ganges Sugar Mills Ltd., and in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Income Tax, : Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Income Tax, , a Bench of this court had held that no open

question of law remained for admission or further scrutiny.

9. Mr. Mullick urged that similar views had been expressed by the Rajasthan High Court in *Commissioner of Income Tax Vs. Instrumentation Ltd.*, , by the Madhya Pradesh High Court in *Hindustan Electro Graphites Ltd. v. CIT* [2002] 258 ITR 518, by the Kerala High Court in *United Catalysts India Ltd. Vs. Commissioner of Income Tax*, and by the Bombay High Court in *Commissioner of Income Tax Vs. Ocean Carriers Pvt. Ltd.*, .

10. Mr. Mullick urged that the intention of the Legislature to curb lavish expenditure in maintaining guest-houses was reflected in the Finance Minister's Budget Speech in Parliament on February 28, 1970, which culminated in the Finance Act, 1970, whereby Sub-section (4) of Section 37 was incorporated in the Income Tax Act, 1961.

11. Mr. Mullick submitted that as had been observed by this court in *Britannia Industries Ltd. Vs. Commissioner of Income Tax and Another*, , the question of law involved in this reference has already been answered and does not require any further scrutiny.

12. Appearing for the respondent-assessee, Dr. Debi Pal, urged that the provisions of Section 37 were general in nature and intended to cover situations not contemplated or covered by sections 30 to 36 of the Income Tax Act, 1961. Dr. Pal urged that by the use of the non obstante clause in Sub-section (4) of Section 37, the Legislature intended that Sub-section (4) was to have an overriding effect over Sub-sections (1) and (3) and was to relate to Section 30 to 36 which had been excluded by Sub-section (1).

13. Dr. Pal urged that certain deductions had been allowed under sections 30, 31 and 32 of the Act which would also apply in the case of guest-houses and had been held as much by different High Courts in the country.

14. Referring to the language of Sub-section (1) of Section 37 of the Income Tax Act, Dr. Pal submitted that by virtue of the non obstante clause used in Sub-section (4) any expenditure, not being in the nature of capital expenditure or personal expenses of the assessee, used for the purpose of the business, is to be allowed in computing the income chargeable under the head "Profits and gains of business or profession" and deduction under sections 30, 31 and 32 is to be allowed thereupon.

15. Dr. Pal submitted that the expression "for the purpose of the business" had been interpreted and explained by the Supreme Court in *Commissioner of Income Tax, Kerala Vs. Malayalam Plantation Ltd.*, to be wider in scope than the expression "for the purpose of earning profits". It was, inter alia, observed that the range of the expression is wide and may take in not only the day-to-day running of a business but also the rationalisation of its administration and modernisation of its machinery and may comprehend many other acts incidental to the carrying on of the business. Dr. Pal urged that the same would also include

maintenance of a guest-house which was incidental to the carrying on of the business.

16. Dr. Pal submitted that an identical question had fallen for consideration before the Bombay High Court in Commissioner of Income Tax Vs. Chase Bright Steel Ltd. (No. 1), , wherein it had been held that since the expenditure related to the maintenance of the guest-house covered by Sections 30 and 31 of the Act, the provisions of Sub-sections (1) and (3) of Section 37 would not be attracted to disallow the permitted deductions.

17. Dr. Pal then referred to another decision of the Bombay High Court in the case of Century Spinning and Manufacturing Co. Ltd. Vs. Commissioner of Income Tax, , where following its decision in the case of Commissioner of Income Tax Vs. Chase Bright Steel Ltd. (No. 1), it was more explicitly observed that although Sub-section (4) of Section 37 is a non obstante clause, it is a non obstante clause vis-a-vis Sub-section (1) and Sub-section (3) of Section 37 only, and if an expenditure or allowance is allowable under other sections of the Act, such allowance cannot be withdrawn or denied to the assessee because of the prohibitory provisions in Section 37(4) of the Income Tax Act, 1961.

18. Reference was also made to a decision of the Gujarat High Court in Commissioner of Income Tax Vs. Maharana Mills Ltd., , wherein the same view as in the Bombay case was expressed and it was also held that the expenses incurred in the guest-house were in respect of modest meals supplied to staff, members and visitors which was not on a lavish scale.

19. Other decisions on this point were also cited which need not detain us.

20. Dr. Pal then submitted that in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Income Tax, , relied upon by Mr. Mullick, the effect of a non obstante clause had not been considered and could not, therefore, be relied upon as an authority for the purposes of Sub-section (4) of Section 37 of the Act and the submission made on behalf of the Revenue that the same was independent of sections 30 to 36 of the Act.

21. Dr. Pal urged that in view of the non obstante clause in Sub-section (4) of Section 37 of the Income Tax Act, the deductions available under other sections, such as sections 30 to 36 would be allowable to an assessee, which having regard to Sections 30, 31 and 32 would include guest-houses.

22. From the materials disclosed hereinabove there is an apparent dichotomy in the views expressed by the different High Courts on the question which is now before us in this reference. While this court has held the view that Sub-section (4) of Section 37 of the Income Tax Act clearly provides that no allowance at all is intended in respect of any expenditure incurred on the maintenance of guest-houses after February 28, 1970, the Bombay High Court had held in Commissioner of Income Tax Vs. Chase Bright Steel Ltd. (No. 1), that the expenditure related to the maintenance of guest houses covered by Sections 30

and 31 could not be disallowed on account of Sub-sections (1) and (3) of Section 37.

23. Of the two views expressed, the language of Sub-section (4) of Section 37 of the above Act appears to support the view expressed by this court. Clause (i) of Sub-section (4) states in no uncertain terms that no allowance shall be made in respect of any expenditure incurred by the assessee after February 28, 1970, on the maintenance of guest-houses. The non obstante clause gives the provisions of Sub-section (4) an overriding effect over Sub-sections (1) and (3). The benefit given to an assessee under Sub-section (3) in relation to the maintenance of a guest-house was taken away by Sub-section (4).

24. In our view, having regard to the unambiguous bar incorporated in Sub-section (4) of Section 37, the benefits indicated in sections 30 to 36, although, independent of Section 37, cannot be related to a guest-house maintained by the assessee. Apart from being the view of the jurisdictional High Court in the Commissioner of Income Tax Vs. Upper Ganges Sugar Mills Ltd., and in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Income Tax, , any other interpretation, in our view, would negate the object of the prohibition engrafted in Sub-section (4).

25. The reference is, therefore, answered in the affirmative. The Tribunal be informed accordingly.

26. There will be no order as to costs.

27. All parties to act on a xerox signed copy of this judgment on the usual undertakings.

Alok Kumar Basu, J.

28. I agree.