(1992) 11 DEL CK 0022

In the Delhi High Court

Case No : Income-tax References No''s. 188 and 189 of 1982

Commissioner of Income Tax APPELLANT

Vs

Central Distillery and Breweries Ltd. RESPONDENT

Date of Decision : 03-11-1992

Acts Referred:

Citation : (1993) 109 CTR 252 : (1993) 202 ITR 45

Hon'ble Judges : P.K. Bahri, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : B. Gupta, Adv Bishamber Lal and Ms. Geetanjali Mohan, for the Appellant;

Judgement

B.N. Kirpal, J.

1 In respect of the assessment years 1976-77 and 1977-78, the Income Tax Appellate Tribunal has stated the case and referred the following two questions of law u/s 256(1) of the Income Tax Act, 1961 :

"1. Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal is correct in law in confirming the deletion of Rs. 11,504 out of the sales promotion expenses treated by the Income Tax Officer as entertainment expenditure ?

2. Whether, on the facts and in the circumstances of the case, the Hon''ble Tribunal is correct in law in confirming the deletion of Rs. 20,651 out of the sales promotion expenses treated by the Income Tax Officer as entertainment expenditure ?"

3. Briefly stated, the facts as found by the Tribunal are that the assessed is a manufacturer of spirits. It provides meals, coffee, tea, etc., in the factory premises to its customers. The total expenditure on this account which was claimed was Rs. 26,545 for the assessment year 1976-77 and Rs. 30,869 for the assessment year 1977-78. Out of these amounts, the Income Tax Officer

disallowed Rs. 11,504 and Rs. 20,651, respectively, for the above assessment years holding that these expenses were entertainment expenses not allowable in law. On further appeal to the Commissioner of Income Tax (Appeals), the disallowances were fully deleted on the basis of the order of the Tribunal in the assessed''s own case for the assessment year 1974-75. The Department filed an appeal before the Income Tax Appellate Tribunal challenging the order of the Commissioner of Income Tax (Appeals). The Tribunal merely followed its order for the earlier assessment year and upheld the decision of the Commissioner of Income Tax (Appeals). It is thereafter that the present reference was made at the instance of the Department. We may note that in respect of the assessment year 1974-75 also reference was made and the same is possibly pending.

4. Mr. Gupta, learned counsel for the Department, contends that the provisions of Explanation 2 to section 37(2A) were not available to the Tribunal when it decided the case. This Explanation ,inter alia, provides that entertainment expenditure includes expenditure on provision of hospitality of every kind by the assessed to any person, whether by way of provision of food or beverages or in any manner whatsoever and whether such expenditure was incurred out of custom or usage of trade. The only exclusion is of the expenditure which had been incurred by the assessed for providing food or beverages to its employees.

5. In our opinion, the contention of learned counsel for the Department is well-founded. Even though, for the assessment years prior to 1976-77, there has been a difference of opinion amongst the High Courts as to whether such expenditure is to be treated as entertainment expenses or not, at least with effect from April 1, 1976, the matter has been set at rest with the intervention of the Legislature. The said Explanation 2 to section 37(2A) puts the matter beyond all doubt and this has also been so held by another decision of this court dated April 22, 1992, in the case of Commissioner of Income Tax Vs. Grandlay Electricals (India), . By virtue of the aforesaid Explanation ,the expenditure of Rs. 11,504 in respect of the assessment year 1976-77 and Rs. 20,651 in respect of the assessment year 1977-78 have to be regarded as entertainment expenditure. The two questions of law are, Therefore, answered in the negative and in favor of the Department. There will be no order as to costs.