

(1978) 08 KL CK 0032

In the High Court Of Kerala

Case No : Income-tax Referred Case No. 62 of 1975

Commissioner of Income Tax

APPELLANT

Vs

Commonwealth Trust Ltd.

RESPONDENT

Date of Decision : 10-08-1978

Acts Referred:

Income Tax Act, 1961 — Section 37(1), 37(3)
Income Tax Rules, 1962 — Rule 6C

Citation : (1979) 1 ILR (Ker) 51 : (1979) 120 ITR 491

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;S.K. Kader, J

Bench : Division Bench

Advocate : P.K.R. Menon, for the Appellant; T.L. Viswanath Iyer, P.S. Narayanan, K.S. Menon, S. Ramachandran and S.R. Dayananda Prabhu, for the Respondent

Judgement

Gopalan Nambiyar, C.J.—This reference by the Income Tax Appellate Tribunal, Cochiu Bench, raises the following questions of law for our determination and opinion :

"(1) Whether, on the facts and in the circumstances of the case and on the interpretation of Section 37(3) of the Income Tax Act, 1961, read with Rule 6C of the Income Tax Rules, 1962, the Income Tax Appellate Tribunal is correct in law in holding that the rule provides only for guest houses and no rule has been made for residential accommodations other than guest houses, and hence no registers need be kept for claiming deduction for expenditure incurred towards the maintenance of the residential accommodations other than guest houses ?

(2) Whether, on the facts and in the circumstances of the case, and on the interpretation of Section 37 of the Income Tax Act, the Income Tax Appellate Tribunal is correct and justified in law and had materials before it in holding that the expenditure of Rs. 50,000 incurred by the assessee towards valuation of its properties, is one wholly and exclusively for the purposes of its business, and hence an allowable deduction ? "

2. The assessee is the Commonwealth Trust Ltd., Calicut, a private limited company. During the assessment year, the company derived income from the business of manufacture and sale of tiles, handloom goods, hosiery articles, etc., and also from the carrying on of agency business. The assessment year with which we are concerned is 1970-71. The accounting year ended on September 30, 1969. The assessee has units at various places and has maintained residential accommodations in five different places. One of these is the West Downs Bungalow at Ootacamund, and the other is a bungalow at Calicut. The question involved is the deductibility of a claim for expenses on the maintenance of these bungalows, amounting to a sum of Rs. 38,219. The ITO disallowed the claim on the ground that the necessary registers had not been maintained by the assessee for substantiating the claim as required by Rule 6C of the I.T. Rules, 1962. This is one of the items of claim involved in this reference. The second item of claim relates to the expenditure of Rs. 50,000 included as miscellaneous expenses and debited in the profit & loss account. The amount represented what was paid for valuation of the company's properties by competent valuers. This amount was disallowed by the ITO on the ground that the expenditure was not for the purpose of the business nor incidental to the carrying on of the business.

3. On appeal by the assessee, the AAC agreed with the ITO that in the absence of registers, the assessee was not entitled to claim deduction in respect of the amount of Rs. 38,219 for maintenance of the guest house. Regarding the second head of claim, namely, the expenditure incurred for valuation of the properties, the AAC was not satisfied that the expenditure was incurred wholly and exclusively for the purpose of the business. In the result, he confirmed the order of the ITO and dismissed the assessee's appeal.

4. On further appeal, the Tribunal allowed both the claims of the assessee. At the instance of the department, the questions of law have been referred and sent up for our determination and opinion.

5. Section 37(3) of the Act reads :

" 37. (3) Notwithstanding anything contained in Sub-section (1), any expenditure incurred by an assessee after the 31st day of March, 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. "

6. And Rule 6C of the I.T. Rules, 1962, reads :

" 6C. Expenditure on residential accommodation including guest houses.--(1) The allowance in respect of expenditure incurred by an assessee on the maintenance of residential accommodation in the nature of a guest house (hereinafter referred to as guest house) shall be limited to the amount laid out or expended on the maintenance of the guest house or, as the case may be, guest houses, specified

hereunder :

(a) one or more guest houses at the principal place of his business or profession in India ;

(b) where the assessee is engaged in the raising or processing of raw materials or the manufacture, processing or production of any article or thing, or is maintaining any industrial establishment in which not less than fifty whole-time employees have been employed throughout the relevant previous year, one or more guest houses at the place where any such operation is performed or the establishment is maintained, as the case may be ;

(c) (i) in the case of an assessee, being a banking company, one or more guest houses at Bombay ;

(ii) in the case of any other assessee, one or more guest houses at Delhi and at not more than two other places in India, which may be the capital of a State Government or any other place which is of direct importance to the business or profession of the assessee ;

(d) where the assessee maintains one or more guest houses at any place other than the places referred to in Clause (a) or Clause (b) or Clause (c) any such guest house or guest houses exclusively used by his employees while on leave :

Provided that the assessee has in his employment not less than one hundred whole-time employees throughout the relevant previous year and the guest house is, or the guest houses are, as the case may be, maintained mainly for the use of the whole-time employees drawing salary not exceeding one thousand rupees per month.

(2) The allowance in respect of expenditure incurred by an assessee, not being a company, on the maintenance of any residential accommodation which results directly or indirectly in the provision of any benefit or any amenity or perquisite to an employee shall not exceed twenty per cent. of the salary due to such employee in respect of the period of his occupation of the said accommodation during the relevant previous year :

Provided that nothing in this sub-rule shall apply to any expenditure which results directly or indirectly in the provision of any benefit or amenity or perquisite to an employee whose income chargeable under the head " Salaries " is seven thousand five hundred rupees or less.

(3) No allowance shall be made in respect of expenditure-incurred on the maintenance of any residential accommodation in the nature of a guest house unless the assessee maintains a register showing the following particulars, namely :--

(i) the name and address of every employee and, in the case of an assessee being a company, firm, an association of persons or a Hindu undivided family, also of every director of the company, partner or member of the firm, association

or family, as the case may be, who had stayed in the guest house ;

(ii) whether his stay in the guest house was for the purposes of the business or profession of the assessee ;

(iii) the date of his arrival at the guest house and the date of his departure therefrom ;

(iv) the amount, if any, paid by him towards his lodging and boarding in the guest house.

(4) For the purposes of this rule, and Rule 6D,--

(i) the expression " guest house " shall include accommodation hired or reserved by the assessee in a hotel for a period exceeding one hundred and eighty-two days during the previous year ;

(ii) the expression " salary " shall have the meaning assigned to it in Clause (h) of Rule 2 of Part A of the Fourth Schedule."

7. The type of accommodation in respect of which the claim for deduction is made in this case is " residential accommodation " as referred to in Section 37(3). Counsel for the revenue would contend that " residential accommodation " is the general category mentioned in Sub-section (3) of Section 37, in which is included the specific category of a " guest house "; and that Rule 6C is meant to cater to the general category, which would include the specific category also. To understand the rules differently would, according to counsel for the revenue, be to bisect the section and to treat the two different types of accommodation differently, for which there would be no justification. It was, therefore, pointed out that the reasoning of the Tribunal in this case cannot be supported or sustained. The Tribunal, it was observed, had taken the view that Rule 6C governs only the type of accommodation of a guest house and not the type of residential accommodation with which we are concerned in this case, and, therefore, in respect of the latter, the requirements of maintaining a register with the particulars mentioned in Rule 6C of the Rules would have no application. We have to see whether this view taken by the Tribunal is correct.

8. We have examined the matter carefully; and, on the whole, after giving the matter our careful attention, we are satisfied that the view of the Tribunal is not only reasonable and proper, but also correct. That one of the purposes of an inclusive definition is to expand the concept defined, is well recognised by judicial decisions and by the principles of interpretation. It is equally well settled that an additive function is not one of the necessary prerequisites of an inclusive definition. Whatever be the position, there can be little doubt that Section 37(3) of the Act treats a guest house somewhat differently from a residential accommodation in the general sense of the term. There seems also to be sufficient justification for doing so. Having thus treated a guest house as separate and different, it has left the extent to which, and the conditions subject to which, the deduction of the expenses is to be allowed, to be prescribed under

the Rules. This is discharged by Rule 6C. The rule faithfully reflects the ambit of Section 37(3), in that it refers to " residential accommodation including guest house ". But there can be no doubt that the scope and the content of the rule is limited only to the inclusive part of Section 37(3) of the Act, namely, " residential accommodation in the nature of a guest house ". That is compendiously referred to in the rest of the Rule as a " guest house " only. So that, it is only in respect of a guest house that the limitation and the requirement of the maintenance of the register showing the particulars and the details mentioned in the rule can be insisted on. As the accommodation in question did not fall under the category of a guest house, the Tribunal was correct in its view that disallowance of the deduction could not be made on the basis of non-compliance with Rule 6C. We do not see anything inequitable or unrighteous in providing by Rule 6C for the maintenance of registers with details and particulars only in respect of what is called a " guest house " and not in respect of the general category of residential accommodation. A residential accommodation is such, for instance, as is provided for the company, by way of quarters for residence of its officers or others, whereas, a guest house is what is provided for the periodical stay of those concerned with the company. A separate treatment and the making of a separate provision for guest houses is quite understandable and reasonable in the circumstances. Accordingly, we are in agreement with the view taken by the Tribunal in its construction of the scope and the purpose of Section 37(3) of the Act and Rule 6C of the I.T. Rules. Counsel for the revenue maintained that even if Rule 6C would not cater to a claim for deductibility of the expenses in respect of " residential accommodation " as different from a " guest house ", the laying out or incurring of the expenditure has still to be tested on the touchstone of Section 37(1) of the Act. We are satisfied that this has been done by the Tribunal. In the order of the Tribunal it has referred to its prior order in *Aruna Sugars Ltd. v. ITO* (I.T.A. Nos. 983 and 984/72-73 dated July 16, 1974); a copy of that order has been annexed as annex. " D " to the application. That order, besides giving reasons for the view taken by the Tribunal in support of its construction of the section and the rule, has also recorded the finding that the expenses incurred by the assessee have to be allowed u/s 37(1) of the Act. In the order of the Tribunal in this case also - annex. " C "-the Tribunal has found that the expenses are allowable u/s 37 itself. There is, therefore, no substance in the objection of counsel for the revenue that the deductibility of the claim has not been adjudged with reference to Section 37(1) of the Act.

9. We turn next to the second head of claim, namely, Rs. 50,000 incurred for valuation of the buildings and the machinery of the assessee. We agree with the Tribunal that the claim falls u/s 37(1) of the Act, and that the amount can well be regarded as having been laid out or expended wholly and exclusively for the purposes of the business. We think that the Tribunal was right in regarding the amount as having been expended on considerations of commercial expediency and sound business principles. It was in accordance with sound commercial practice to see that the buildings and machinery of the assessee were kept and

maintained in a good state of efficiency for their work and functioning : and valuation of these, done by the assessee, in the circumstances, must be regarded as expenses incurred wholly and exclusively for the purpose of the business. We uphold the Tribunal's order allowing this head of claim for deduction.

10. In the result, we answer both the questions referred in the affirmative, that is, in favour of the assesseees and against the revenue. There will be no order as to costs.

11. A copy of this judgment under the signature of the Registrar and the seal of this court will be forwarded to the Income Tax Appellate Tribunal, Cochin Bench, as required by law.