(2006) 12 AHC CK 0056

In the Allahabad High Court

Commissioner of Income Tax APPELLANT

Vs

Deepchand Naresh Chand RESPONDENT

Date of Decision : 14-12-2006

Acts Referred:
Income Tax Act, 1961 — Section 256(1), 30

Citation : (2006) 12 AHC CK 0056

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Judgement

R.K. Agrawal, J.—The Income Tax Appellate Tribunal has referred the following question of law u/s 256(1) of the Income Tax Act, 1961(hereinafter referred to as "the Act"), for the opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in upholding the order of the Commissioner (Appeals) in deleting the disallowance of rent of Rs. 31,200 in respect of ''Transit House'' accommodation on the premise that the same being specifically allowable u/s 30 of the Income Tax Act, the prohibitory provisions of Section 37(4) of the Income Tax Act were not applicable ?

2. The reference relates to the assessment year 1986-87.

3. Briefly stated, the facts giving rise to the present reference are as follows:

4. The deduction claimed by the assessee on account of rent included an amount of Rs. 31,200 paid for premises used as a guest house. This amount was disallowed by the assessing officer u/s 37(4) of the Act. On appeal, the Commissioner (Appeals) deleted the disallowance on the premise that Section 37(4) of the Act authorises disallowance of only those expenses which could be considered under Sub-section (1) or Sub-section (3) of Section 37 of the Act. Since payment of rent was allowable u/s 30 of the Act, the provisions of Section 37(4) and Section 37(5) could not be invoked to disallow payment of rent of the guest house. On appeal by the department, the Tribunal referred to the cleavage

of opinion on the subject among various High Courts and preferred to adopt the interpretation which was favourable to the assessee. It, thus, upheld the order of the Commissioner (Appeals). The order of the Tribunal reads as under:

On the issue involved there is a difference of opinion among various High Courts. At one hand, some High Courts have taken the view that the disallowance u/s 37(4) shall be restricted to the expenditure allowable under Sub-section (1) or (3) of Section 37 only, on the other hand, some High Courts have held that the whole of the expenditure on maintenance of guest house, including rent and depreciation, is to be disallowed u/s 37(4) of the Income Tax Act. We are inclined to adopt the interpretation which is favourable to the assessee. Accordingly the rent of Rs. 31,200 paid for the guest house accommodation is held to be allowable u/s 30 of the Income Tax Act. The order of the Commissioner (Appeals) on this issue is upheld.

5. We have heard Sri R. K. Upadhyaya, learned Counsel appearing for the revenue, and Sri S. D. Singh, learned Counsel appearing for the assessee.

6. We find that the controversy raised herein is squarely covered by the 6 decision of the apex court in the case of Britannia Industries Ltd. Vs. Commissioner of Income Tax, West Bengal, Kolkata and Another, wherein the apex court has held as follows (page 558):

The only question which we are called upon to consider in the instant case is whether the expression ''premises and buildings'' referred to in Sections 30 and 32 and used for the purposes of the business or profession would include within its scope and ambit the expression ''residential accommodation including any accommodation in the nature of guest house'' used in Sub-sections (3), (4) and (5) of Section 37 of the Act. While the two expressions can be similarly interpreted, a distinction has been sought to be introduced for the purposes of Section 37 by specifying the nature of building to be a guest house. In our view, the intention of the Legislature appears to be clear and unambiguous and was intended to exclude the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purposes of a guest house of the nature indicated in Sub-section (4) of Section 37. When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give it a meaning which would cause violence to the provisions of the statute. If the Legislature had intended that deduction would be allowable in respect of all types of buildings/ accommodations used for the purposes of business or profession, then it would not have felt the need to amend the provisions of Section 37 so as to make a definite distinction with regard to buildings used as guest houses as defined in Sub-section (5) of Section 37 and the provisions of Sections 31 and 32 would have been sufficient for the said purpose. The decisions cited by Dr. Pal contemplate situations where specific provision had been made in Sections 30 to 36 of the Act and it was felt that what had been specifically provided therein could not be excluded u/s 37. The clarification introduced by way of Sub-section (5) to Section 37 was also not considered in the said case.

7. As the Apex Court has already held that the provisions of Sub-section (4) of Section 37 of the Act are attracted to a case where the provisions of Section 30 of the Act are applicable in so far as it relates to the guest house expenses, the view of the Tribunal is not correct.

8. We, therefore, answer the question referred to us in the negative, i.e., in favour of the revenue and against the assessee. There shall be no order as to costs.