
(1999) 08 BOM CK 0103

In the Bombay High Court

Case No : IT Reference No. 3 of 1990 2 August 1999 A.Y. 1977-78

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

INDIAN PLASTICS LTD.

RESPONDENT

Date of Decision : 02-08-1999

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1999) 3 MhLj 572 : (2000) 107 TAXMAN 172

Hon'ble Judges : Smt. Ranjana Desai, J;Ranjana Desai, J;Dr. B.P. Saraf, J;B.P. Saraf, J

Bench : Full Bench

Advocate : R.V. Desai and P.S. Jetly, for the Revenue J. Jain, for the Assessee, for the Appellant;

Judgement

Saraf, J.

By this reference u/s 256(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), the Tribunal has referred the following question of law to this court for opinion at the instance of the revenue:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in coming to the conclusion that the assessee was entitled to the deduction of Rs. 54,305.

2. The material facts giving rise to the question are as under :

The assessee is engaged in the business of manufacture of plastics. It has its factory at Poiser, Kandivali. It has an office at Bombay, which is situated at Lotus House. The assessee has also offices in Delhi, Calcutta, Bhagwara and Sonipat. During the previous year ended 31-3-1977, relevant to the assessment year 1977-78, to which the reference pertains, the assessee incurred expenditure of Rs. 59,305 in its various offices for the purpose of providing tea, coffee, cold drinks, snacks and at times, meals to its customers. The assessee debited this expenditure under the head "Sales promotion expenses". The Income Tax Officer

did not allow this claim of the assessee as he was of the opinion that the expenditure incurred by the assessee was in the nature of entertainment expenditure and, as such, had to be processed under the provisions of section 37(2A) of the Act. The Income Tax Officer, accordingly, allowed a deduction of Rs. 5,000 only against the assessee's claim of Rs. 59,305. The assessee appealed to the Commissioner (Appeals). The Commissioner (Appeals) was of the opinion that the expenditure of Rs. 59,305, which was the subject-matter of dispute, was the normal expense on routine courtesy and hospitality which every businessman has to incur in the interest of his business. He also observed that the expenses were not on a lavish scale. The Commissioner (Appeals), therefore, decided the appeal in favour of the assessee and directed the Income Tax Officer to allow the claim of the assessee for deduction of the balance amount of Rs. 54,305 u/s 37(1). The above order was confirmed by the Tribunal. Hence, this reference at the instance of the revenue.

3. We have heard Mr. R. V. Desai, the learned counsel for the revenue and Mr. J. Jain for the assessee. There is no dispute that the deduction in respect of the expenditure of the nature referred to above was allowable as a deduction in computing the total income of an assessee under sub-section (1) of section 37. Even the Supreme Court in CIT v. Patel Bros. & Co. Ltd. : [1995]215ITR165(SC) had held that despite the restrictions imposed in allowing "entertainment expenditure" as a business expenditure by virtue of sub-section (2A) of section 37, the expenditure incurred in extending customary hospitality by offering ordinary meals as a bare necessity, was not entertainment expenditure within the meaning of sub-section (2A) of section 37.

4. That position, however, has changed with the enlargement of the meaning of "entertainment expenditure" by insertion of Explanation 2 to sub-section (2A) of section 37 by the Finance Act, 1983 with the retrospective effect from 1-4-1976. Explanation 2 reads:

Explanation 2.-For the removal of doubts, it is hereby declared that for the purposes of this sub-section and sub-section (2B), as it stood before 1-4-1977, "entertainment expenditure" includes expenditure on provision of hospitality of every kind by the assessee to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade, but does not include expenditure on food or beverages provided by the assessee to his employees in office, factory or other place of their work. [Emphasis here italicized in print supplied]

5. By the above Explanation, the meaning of entertainment expenditure in sub-section (2A) of section 37 has been enlarged to include expenditure on provision of hospitality of every kind by the assessee to any person, whether by way of provision of food and beverages or in any other manner. As a result, in relation to expenses for the assessment year 1976-77 and subsequent assessment years, such expenditure would be treated as "entertainment expenditure" within the

meaning of sub-section (2A) of section 37 and deductibility thereof has to be decided in the light of the restrictions contained therein.

6. In the present case, the Income Tax Officer had computed the deduction by applying the provisions of section 37(2A) and allowed deduction for a sum of Rs. 5,000 only and rejected claim for deduction of the balance amount of Rs. 54,305.

7. The learned counsels for the parties are agreed that in view of the amendment to section 37(2A) by insertion of the Explanation set out above, the action of the Income Tax Officer is correct. Deduction cannot be allowed in respect of such expenses now u/s 37(1) as has been done by the Tribunal.

8. In the premises, it is clear that the Tribunal was not justified in holding that the assessee was entitled to deduction of the expenditure of Rs. 54,305 incurred by the assessee in extending customary hospitality to the customers by offering meals, etc., u/s 37(1). The question referred to us is, therefore, answered in the negative, i.e., in favour of the revenue and against the assessee.

9. This reference is disposed of, accordingly, with no order as to costs.