

(2005) 03 AHC CK 0269
In the Allahabad High Court
Case No : IT Ref. 139 of 1992

Commissioner of Income Tax

APPELLANT

Vs

Krishna Kumar and Bros.

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 37(3A), 37(3B)

Citation : (2006) 204 CTR 289 : (2008) 296 ITR 684 : (2006) 154 TAXMAN 287

Hon'ble Judges : R.K. Agrawal, J; K.N. Ojha, J

Bench : Division Bench

Advocate : A.N. Mahajan, for the Appellant; None, for the Respondent

Judgement

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

Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the expenditure of Rs. 1,41,468 in the Delhi set and Rs. 2,80,934 in the Moradabad set which was incurred on prize coupons was not covered by the provisions of Section 37(3A) of IT Act, 1961, in spite of the Tribunal's own observation that the prize coupons were intended to and did promote sales ?

2. The reference relates to the asst. yr. 1984-85.

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

The respondent-assessee has incurred an expenditure of Rs. 1,41,468 in the Delhi set and Rs. 2,80,934 in the Moradabad set on a prize scheme under which coupons entitling a customer to a prize of 25 paise or 50 paise were kept in some of the bundles of the Biri and if the bundles contain the prize coupon, the customer would get the prize amount from the dealer and the dealer would collect the money from the respondent. The assessing authority had disallowed a

sum of 20 per cent of the amount which was in excess of Rs. 1,00,000 by invoking the provisions of Section 37(3A) of the Act. Feeling aggrieved, the respondent preferred an appeal before the CIT(A) who had upheld the disallowance. However, in further appeal, the Tribunal had accepted the claim of the respondent and had held that the expenditure incurred by the respondent did not come under any of the clauses mentioned in Sub-section (3A) of Section 37 of the Act. The Tribunal has held as follows:

In the case before us the expenditure has not been incurred for giving articles or cash to the assessee's dealers. It has, on the other hand, been incurred on payments made to the assessee's consumers. In any case, we are of the view that the words "advertisement, publicity and sales promotion" have to be strictly interpreted and only expenditure that is of the nature of advertisement and publicity resulting in sales promotion can be subjected to the restrictions. Other expenditure which does not strictly fall within the words used by the legislature would not come within the mischief of this section though it may be intended to result or may actually result in promoting sales. In several cases this Tribunal has held that expenditure on allowance of a trade discount is not expenditure covered by Section 37(3A) r/w Section 37(3B). In the case before us in some of the bundles of Biri, which are sold at 75 paise each, the assessee puts a prize coupon of 25 paise or 50 paise. The result is that if a customer gets a bundle from which a 25 paise (coupon) is recovered he would get that amount from the dealer in cash or he may purchase yet another bundle of Biri by paying 50 paise only and delivering the coupon to the dealer. The same way a person who gets a coupon of 50 paise may either take cash or may purchase another bundle of Biri by paying only 25 paise along with the coupon. This is just nothing but a trade discount and though such activities are intended to promote sales and it promote sales, yet in our view, the expenditure incurred on such scheme cannot be termed as expenditure on advertisement, publicity and sale promotion. We, therefore, direct that the expenditure of Rs. 1,41,468 and Rs. 2,80,934 shall be excluded for calculating the disallowance u/s 37(3A). The AO shall, therefore, recalculate the disallowable portion of the expenditure.

3. We have heard Sri A.N. Mahajan, learned standing counsel for the Revenue. Nobody has appeared on behalf of the respondent-assessee.

4. The learned standing counsel submitted that the prize scheme by inserting coupons of 25 paise or 50 paise in some bundle of Biri was clearly meant to attract customers and was, thus, a sales promotion scheme. The expenditure incurred was fully covered under cl. (i) of Sub-section (3B) of Section 37 and, therefore, the excess amount incurred over and above Rs. 1,00,000 would attract the provisions of Sub-section (3A) of Section 37 of the Act.

5. Having heard the learned Counsel for the parties, we find that the prize scheme introduced by the respondent was in the nature of sales promotion scheme and it was to attract the customers. It is not a case of giving discount to customers because every customer was not getting the prize coupon. The prize

coupon has been inserted in some of the bundle of the Biri and not all. Thus, it is a case of sales promotion. u/s 37(3A) of the Act, as it stood during the relevant period, 20 per cent of the excess amount of expenditure incurred on any one or more of the items specified in Sub-section (3B) was to be disallowed from the deductions claimed on computing the income chargeable under the head "Profits and gains of business or profession". Sub-section (3B) of Section 37 of the Act refers to the expenditure incurred on advertising, publicity and sales promotion. As the expenditure in question clearly falls under the heading sales promotion, the Tribunal was not justified in deleting the disallowance.

6. We accordingly 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.