
(1997) 07 KAR CK 0026

In the Karnataka High Court

Case No : IT Ref. Case No's. 126 and 127 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Mysodet (P) Ltd.

RESPONDENT

Date of Decision : 08-07-1997

Acts Referred:

Income Tax Act, 1961 — Section 256 (2), 37, 37 (3), 40 (c)
Income Tax Rules, 1962 — Rule 6B

Citation : (1998) 233 ITR 674

Hon'ble Judges : V. Gopala Gowda, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : M.V. Seshachala, for the Appellant; G. Sarangan and S. Parthasarathy, for the Respondent

Judgement

G.C. Bharuka, J.—Heard Mr. M. V. Seshachala, learned standing counsel for the IT Department, and Mr. G. Sarangan, learned senior advocate with Mr. S. Parthasarathy, learned counsel for the respondent.

2. In this reference under s. 256(2) of the IT Act, 1961 (in short the "Act"), we are required to record our opinion on the following questions of law -

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in deleting the addition of Rs. 74,863 for the asst. yr. 1978-79 and Rs. 46,502 for the asst. yr. 1979-80 being the disallowance of expenses of presentation articles made to customers exceeding Rs. 50 each item by applying r. 6B ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that only s. 40(c) would apply in the instant case in respect of payment made to a director and that the ceiling limit would be Rs. 72,000 ?"

3. In so far as the second question of law is concerned, the same has been answered by this Court under its order dt. 5th December, 1989, following the

decision in the case of International Instruments (P.) Ltd. Vs. Commissioner of Income Tax, Karnataka, .

4. The assessee is a private limited company carrying on business in insecticides, pest control operations and export of coffee mainly to the USSR. For the asst. yrs. 1978-79 and 1979-80, the assessee had claimed deduction under s. 37 of the Act to the tune of Rs. 79,912 and 50,565, respectively, under the head "Business promotion expenses", which were disallowed by the IAC to the extent of Rs. 74,863 and Rs. 46,502, respectively, since according to him as per r. 6B of the IT Rules, 1962 (in short the "Rules"), any presentation made above Rs. 50 was not admissible.

5. The assessee questioned the said disallowance before the CIT(A). The appellate authority found that the said disallowance was uncalled for, since according to him it was not for advertisement. The appeal taken by the Revenue to the Tribunal proved futile, since the Tribunal also agreed with the view taken by the CIT(A).

6. For the present purpose, s. 37(3) of the Act and r. 6B of the Rules are material provisions and, therefore, these are being noticed hereunder :

"37. General. - . . . (3) Notwithstanding anything contained in sub-s. (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."

"Rule 6B. Expenditure on advertisement. - (1) The allowance in respect of expenditure on advertisement shall not in the following cases exceed -

(a) in respect of articles intended for presentation, Rs. 50 on each such article."

7. On a reading of the said provisions, it cannot be seriously disputed that r. 6B of the Rules has to be understood only in the context of the restrictive provisions contained under s. 37(3) of the Act which means that if an article of value of above Rs. 50 is presented then expenditure claimed on this count can be disallowed, only if it is found as of fact that the said presentation was made with the intention of advertising the articles dealt in by the assessee. But, in the present case, as we found from the order of the AO, that he has disallowed the expenses in question by reading merely r. 6B in isolation as if it provides that any expenditure claimed out of the gross business income on account of gift of articles of more than Rs. 50 has to be ipso facto disallowed. Before the AO, though a specific contention was raised by the assessee that the articles presented to their clients were of sandalwood or ivory pieces which were meant only as a measure of business promotion and not for any advertisement of their products but the learned AO without examining the said aspect in its proper

perspective, mechanically applied the restrictive conditions contained in r. 6B of the Rules, by merely holding that since the presentation items were of value of more than Rs. 50, therefore, the same are not admissible as business expenditure.

8. On the contrary, both the appellate authorities as well as the Tribunal as a matter of fact found that the presentations were made just for business promotion and not for the purpose of any advertisement. In the said view of the matter, in our opinion, the Tribunal was right in deleting the disallowance in question.

9. For the reasons aforesaid, we answer the first question in favour of the assessee and against the Revenue. No costs.