

(1980) 12 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 122 of 1978

Commissioner of Income Tax

APPELLANT

Vs

Navalmal Punamchand

RESPONDENT

Date of Decision : 04-12-1980

Acts Referred:

Income Tax Act, 1961 — Section 37(2B)

Citation : (1982) 135 ITR 801

Hon'ble Judges : R.K. Vijayvargiya, J;G.G.Sohani, J

Bench : Division Bench

Advocate : S.C. Bagadiya, for the Appellant; J.W. Mahajan, for the Respondent

Judgement

Sohani, J.—By this reference u/s 256(1) of the I.T. Act, 1961, hereinafter referred to as "the Act", the Income Tax Appellate Tribunal, Indore Bench, has referred the following question of law to this court for its opinion:

"Whether the Tribunal was justified in holding that the expenditure incurred by the assessee for providing messing to its trade constituents did not amount to expenditure in the nature of entertainment expenditure as contemplated by Section 37(2B) of the Income Tax Act, 1961 ?"

2. The material facts giving rise to this reference briefly are as follows : The assessee derives income from business in cloth. In the assessment years 1972-73 and 1973-74, the assessee claimed deduction of the messing expenses on the ground that, in accordance with the custom of the trade, the assessee had to provide meals to its upcountry customers. The claim was disallowed by the ITO on the ground that the expenditure was for entertainment within the meaning of Section 37(2B) of the Act. On appeal, the AAC did not uphold the view of the ITO that the expenses were not allowable under the provisions of Section 37(2B) of the Act. The AAC partly allowed the expenses claimed by the assessee. Aggrieved by the order of the AAC, the revenue preferred an appeal before the Tribunal. The Tribunal upheld the finding of the AAC and dismissed the

appeal. Aggrieved by the order passed by the Tribunal, the revenue submitted an application for making a reference and it is at the instance of the revenue that the aforesaid question of law has been referred to this court for its opinion.

3. Recently, a Division Bench of this court had occasion to consider the question of law referred to in this case in CIT v. Lakhmichand Muchhal [MCC No. 15 of 1977 decided on 12th September, 1980--since reported in [1982] 134 ITR 234]. In that case it was held that hospitality shown on account of obligation of business arising as a result of an express or implied contract or arising on account of long-standing custom of a trade cannot amount to entertainment. In view of the decision in CIT v. Lakhmichand Muchhal [1982] 134 ITR 234 our answer to the question referred to this court is in the affirmative and against the revenue.

4. The reference is answered accordingly. Parties shall bear their own costs of this reference.