
(1986) 01 CAL CK 0033
In the Calcutta High Court
Case No : Income-tax Appeal No. 174 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Parshva Properties Ltd.

RESPONDENT

Date of Decision : 14-01-1986

Acts Referred:

Income Tax Act, 1961 — Section 37(4)

Citation : (1986) 53 CTR 151 : (1987) 164 ITR 673

Hon'ble Judges : Satish Chandra, C.J.;Mukul Gopal Mukherji, J

Bench : Division Bench

Advocate : M.L. Bhattacharji, for the Appellant;D. Pal, M. Seal and J.C. Ghosh, for the Respondent

Judgement

Satish Chandra, C.J.—For the assessment year 1972-73, the assessee claimed deduction of Rs. 13,012 as expenses on the maintenance of its guest house. This claim was rejected by the Income Tax Officer who added back the amount as income. This add-back was upheld by the Appellate Assistant Commissioner. Aggrieved, the assessee took the matter in appeal to the Tribunal. The Tribunal upheld the claim of the assessee. At the instance of the Revenue, the Tribunal has referred the following question of law :

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the expenditure of Rs. 13,012 u/s 37 of the Income Tax Act, 1961, for the opinion of this court ? "

2. On facts, the position is that the statement made by learned counsel on behalf of the assessee was believed by the Tribunal. It was found that the bungalow was situated at Pipridih which was situated in a remote corner of the district of Rohtas in the State of Bihar. Employees of the company, auditors, mining engineers and other Government officials went there on duty and stayed there temporarily for doing their work. Expenses were incurred on the stay of such persons at the bungalow. No one went to this bungalow for entertainment or relaxation. The Tribunal held that it could not envisage a situation where the

guests of the assessee could be normally taken to that place and be entertained gratuitously or at a concessional rate. It was also found that no daily allowance was paid to the employees of the assessee who went to Pipridih on duty and stayed in the bungalow.

3. On these facts, the Tribunal concluded that the maintenance of the bungalow cannot be held to be maintenance of a guest house within the meaning of Section 37(4)(ii). The guest house envisaged in that provision is a place where the guests are received and entertained gratuitously or at a concessional rate. A hotel cannot be deemed to be a guest house-within the meaning of the aforesaid provision. In our opinion, the Tribunal correctly concluded that on the facts mentioned above, the bungalow in question cannot be treated as a guest house within the meaning of the aforesaid provision of Section 37 and, hence, the expenses could not be disallowed on the ground that the amount was used for maintenance of the guest house.

4. Accordingly, we answer the question referred to us in the affirmative and in favour of the assessee and against the Department. There will be no order as to costs.

M.G. Mukherji, J.

5. I agree.