(1998) 03 MAD CK 0069

In the Madras High Court

Case No : Tax Case No''s. 5422 to 5424 of 1986 (Reference No''s. 270 to 272 of 1986)

Commissioner of Income Tax — APPELLANT

Vs

Prasad Process (P.) Ltd. — RESPONDENT

Date of Decision : 04-03-1998

Acts Referred:
Income Tax Act, 1961 — Section 37

Citation : (2000) 243 ITR 830

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; B. Ravi Raja, for the Respondent

Judgement

N. V. Balasubramanian, J.—Mr. B. Ravi Raja, learned counsel, undertakes to file vakalath for the respondent.

2. At the instance of the Revenue, the following question of law has been referred to us for our consideration :

Whether, on the facts and in the circumstances of the case and having regard to the provisions of Section 37(2B) of the Income Tax Act, the

Appellate Tribunal was right in allowing the sum of Rs. 22,666, Rs. 37,175 and Rs. 54,097 as a deduction in the assessment years 1972-73,

1973-74 and 1974-75 (respectively) ?

3. The assessee is a company carrying on the business of printing and publishing''. We are concerned with three assessment years, viz., 1972-73 to

1974-75. For all the three assessment, years, the assessee claimed certain expenditure as business expenditure. The Income Tax Officer

disallowed the claim in full and on appeal, the Appellate Assistant Commissioner partly allowed the same. On appeal by the Revenue before the

Appellate Tribunal, the Tribunal dismissed the appeal preferred by the Revenue and at the instance of the Revenue, reference in Tax Cases Nos.

1249 to 1251 of 1980, was made and this court by a judgment reported in Commissioner of Income Tax, Madras Vs. Prasad Process (Pvt.) Ltd.,

held that the Tribunal had not given a proper consideration to the issue before it and, in the absence of materials, this court held that the reference

could not be answered, and, therefore, returned the reference unanswered with a direction to the Tribunal to consider the matter afresh in the light

of the observations made by this court. Then the matter went before the Appellate Tribunal and the Appellate Tribunal considered the matter in the

light of the directions of this court and found that the expenditure was all routine expenditure like tea and coffee to the customers and it could not

be regarded as entertainment expenditure as per the law prior to the amendment made in the year 1976.

4. We are of the opinion that the finding'' of the Appellate Tribunal is arrived at on the basis of the materials and on materials, the Tribunal came to

the conclusion that the expenditure incurred by the assessee could not be regarded as entertainment expenditure and once it is not entertainment

expenditure, the expenditure claimed is allowable as business expenditure. Further, the three assessment years with which we are now concerned

relate to the period prior to the amendment made to Section 37 of the Income Tax Act in the year 1976, and that the amendment made to Section

37 is not applicable to those assessment years. We are of the opinion that the Tribunal has come to the correct conclusion that the expenditure

incurred by the assessee is all business expenditure and allowable in the computation of business income of the assessee for the three assessment

years in question.

5. Accordingly, we answer the question of law referred to us in the affirmative, in favour of the assessee and against the Department. However in

the circumstances of the case there will be no order as to costs.

