
(1985) 04 RAJ CK 0004

In the Rajasthan High Court

Case No : Income Tax Reference No. 45 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Ratan Chand Samir Mal

RESPONDENT

Date of Decision : 22-04-1985

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2), 37(3)
Income Tax Rules, 1962 — Rule 6B

Citation : (1985) 48 CTR 322 : (1985) 154 ITR 399 : (1985) 23 TAXMAN 268

Hon'ble Judges : Shyam Sunder Byas, J; S.K. Mal Lodha, J

Bench : Division Bench

Advocate : J.L. Daga, for the Appellant;

Judgement

Mal Lodha, J.—This is an application u/s 256(2) of the Income Tax Act, 1961 (for short "the Act"), for a direction to the Income Tax Appellate Tribunal, Jaipur Bench, Jaipur ("the Tribunal"), to refer the alleged question of law as stated in para, 5 of the application, which is as under :

"Whether, on the facts and in the circumstances of the case, including the fact that there was evidence on record regarding the weight of each glass to be 114 gms. and the fact that the alleged purchase bills of the glasses were produced only before the AAC and the ITO was not afforded any opportunity to examine these bills, as also the fact that a sum of Rs. 25,074 had already been allowed by the ITO by way of advertisement expenses, the Income Tax Appellate Tribunal was justified in holding that the sum of Rs. 98,701 claimed as sales promotion expenses was an admissible expenditure in the computation of the assessee's total income for the assessment year 1973-74 ?"

2. The assessee-respondent is a firm. The assessment year in question is 1973-74. The assessee-respondent derives income from sales of voiles as agent of M/s. Lodha Fabrics, Pali. Regarding the assessment year 1973-74, it disclosed gross profit of Rs. 4,75,900 on sales of Rs. 59,72,450. It was noticed by the Income Tax Officer, "A"-Ward, Pali ("the ITO"), that the assessee had debited a

sum of Rs. 98,701 as expenses for sales promotion. This was, in fact, for distributing silver glasses to its customers. The ITO by his order dated March 11, 1976, disallowed the expenditure of Rs. 98,701. An appeal was taken by the assessee. The AAC, vide his order dated January 3, 1977, accepted the appeal holding that the assessee should be given relief of Rs. 98,701 as the ITO was not justified in invoking Rule 6B of the I.T. Rules, 1962 (hereinafter referred to as "the Rules"), for the articles distributed by the assessee to its customers were of a value of less than Rs. 50 each. He allowed the sum on the ground that it was spent wholly and exclusively for the purpose of the business. In this view of the matter, the addition of Rs. 98,701 was deleted being an allowable expenditure. The ITO lodged a further appeal. By its order dated June 15, 1978, the Tribunal dismissed the appeal holding that the amount of Rs. 98,701 was spent wholly and exclusively for the purpose of the business and so it was an allowable expenditure u/s 37 of the Act. It affirmed the order of the AAC in this regard.

3. An application u/s 256(1) of the Act was filed by the CIT, Jodhpur, before the Tribunal. The Tribunal rejected the application holding that the finding recorded by the Tribunal in its order is a finding of fact and so no question of law would arise out of its order. This has led to the filing of the application u/s 256(2) of the Act.

4. We have heard Mr. J. L. Daga, learned counsel for the Revenue, in support of the application u/s 256(2) of the Act. It may be stated here that Mr. B. R. Arora, who has filed power on behalf of the assessee on October 25, 1979, pleaded no instructions and did not participate during the hearing of the reference application.

5. The only question before us at this stage is whether the order of the Tribunal rejecting the reference application u/s 256(1) of the Act by its order dated December 29, 1978, is correct on the ground that no question of law arises out of its order dated June 15, 1978.

6. Before we proceed further, we may read the relevant part of Section 37 of the Act :

"37. General.--(1) Any expenditure (not being expenditure of the nature described in Sections 30 to 36 and Section 80VV and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head " Profits and gains of business or profession ".....

(3) Notwithstanding anything contained in Sub-section (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.

(3A) Notwithstanding anything contained in Sub-section (1) but without prejudice to the provisions of Sub-section (2B), or Sub-section (3), where the aggregate expenditure incurred by an assessee on advertisement, publicity and sales promotion in India exceeds forty thousand rupees, so much of such aggregate expenditure as is equal to an amount calculated as provided hereunder shall not be allowed as a deduction, namely :--

(i) where such aggregate expenditure does not exceed 1/4 per cent, of the turnover or, as the case may be, gross receipts of the business or profession

10 per cent, of the adjusted expenditure ;

(ii) where such aggregate expenditure exceeds 1/4 per cent, but does not exceed 1/2 per cent, of the turnover or, as the case may be, gross receipts of the business or profession

12 1/2 per cent, of the adjusted expenditure ;

(iii) where such aggregate expenditure exceeds 1/2 per cent, of the turnover or, as the case may be, gross receipts of the business or profession

15 per cent. of the adjusted expenditure."

7. According to Section 37(3) of the Act, expenditure on advertisement incurred wholly and exclusively for the purpose of the business is an allowable expenditure. We may notice Rule 6B of the Rules, which is as follows :

"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.....

(2) (i) Where the Income Tax Officer is of opinion that any expenditure on advertisement of the nature described in Clause (ii) is excessive or unreasonable having regard to the legitimate business needs of the assessee and the benefit derived by or accruing to him therefrom, that portion of the expenditure which is so considered by him to be excessive or unreasonable shall not be allowed as a deduction in computing the total income ;

(ii) the expenditure referred to in Clause (i) is that incurred on advertisement involving payment -

(A) to a person (including in the case of a company, firm, an association of persons or a Hindu undivided family, a director, partner or member, as the case may be, of such company, firm, association or family) who has a substantial interest in the business of the assessee, or to a relative of such person ; or

(B) to a person who carries on the business of, or profession as, a publicity or advertising agent, where the assessee, or in a case where the assessee is a

company, firm, an association of persons or a Hindu undivided family, any director, partner or member, as the case may be, of such company, firm, association or family, or any relative of such assessee or such director, partner or member, has a substantial interest in the business or profession of that person. "

8. The ITO, as is apparent from his order dated March 11, 1976, disallowed the expenditure of Rs. 98,701 on the ground that a sum of Rs. 25,704 has already been allowed to the assessee as advertisement expenditure. After applying the tests, he was of the opinion that the value of each glass of 114 gms. which was distributed among the customers of the assessee exceeded Rs. 50, which is not permissible under the Rules. He was further of the opinion that the business of the assessee never necessitated such heavy expenditure of Rs. 98,701. On appeal, the AAC reversed the aforesaid findings after considering the material that was placed before him and held that the articles (silver glasses) distributed to the customers of the assessee were of a value of less than Rs. 50 each and, therefore, there was no infringement of Rule 6B of the Rules. Regarding necessity of such an expenditure, the AAC observed as under:

" To me, it appears that the expenditure was wholly and exclusively for the purpose of business..... The records reveal that a number of customers confirmed that glasses were received by them. In my opinion, the expenditure is allowable. The addition is deleted."

9. These findings were sought to be questioned by the ITO in further appeal before the Tribunal and the Tribunal has summarised its reasons in para. 7 of its order dated June 15, 1978, as under :

"The learned AAC gave good reasons in support of his finding. The assessee has produced all the evidence before the authorities below. Even the original bills were produced by the assessee. These bills do go to show that the value of each glass was between Rs. 47 to Rs. 48. As a matter of fact, there was no material on record to show that the value of each glass exceeded Rs. 50. The learned ITO made some enquiries from the constituents and in reply they informed him that they did receive the glasses. It is common ground that in this year, the sales have increased considerably as compared to the sales of the immediately preceding year. "

10. In view of this, the Tribunal concurred with the conclusions reached by the AAC that the expenditure of Rs. 98,701 in question was incurred wholly and exclusively for the purpose of the business and it was rightly allowed by the AAC. The finding recorded by the AAC which have been confirmed by the Tribunal as is clear from the excerpted portion of the order of the Tribunal, in our opinion, are findings of fact and nothing was pointed out by the learned counsel for the Revenue to show that these findings, though of fact; stand vitiated on account of the reason that there is no material on record to support the findings or that they are perverse or that they are based on irrelevant and extraneous considerations. The question that has been suggested by the Commissioner in his application u/s

256(2) of the Act, except that whether the Tribunal was justified in holding that a sum of Rs. 98,701 claimed as sales promotion expenses was an admissible expenditure in the computation of the assessee's total income for the assessment year 1973-74, did not challenge some of the findings recorded by the AAC which were confirmed in appeal by the Tribunal. There is a finding of fact by the AAC which is based on evidence that the articles (silver glasses) which were distributed to the customers of the assessee were less than Rs. 50 each. Under Rule 6B of the Rules, the prohibition is with respect to articles, the cost of which exceeds Rs. 50. As per the finding of the AAC which was confirmed by the Tribunal, the cost of each silver glass distributed to the customers by the assessee did not exceed Rs. 50 and, therefore, it cannot be said that this was in breach of Rule 6B of the Rules. No good reasons were shown to us to take a contrary view from the one taken by the AAC and for that matter by the Tribunal that the expenditure relating to the distribution of silver glasses to the customers of the assessee was incurred wholly and exclusively for the purpose of the business.

11. A bare perusal of Section 37(3) of the Act shows that once the conclusion is reached that an expenditure was incurred wholly and exclusively for the purpose of the business, may be on advertisement or for promotion of business, if it does not exceed the limitation provided in Rule 6B of the Rules, then it has to be allowed as an allowable expenditure. Having bestowed our best consideration to the submissions made by the learned counsel for the Revenue, we are of the considered opinion that no question of law arises out of the Tribunal's order dated June 15, 1978, and that the Tribunal was right in rejecting the application u/s 256(1) of the Act. The decision rendered on the application u/s 256(1) of the Act cannot be said to be incorrect.

12. As no question of law arises out of the order dated June 15, 1978, passed by the Tribunal, we decline to give any direction to the Tribunal to refer the question of law proposed by the Commissioner of Income Tax in para. 5 of the application.

13. The application u/s 256(2) of the Act is dismissed. There will be no order as to costs.