

(1993) 02 CAL CK 0003
In the Calcutta High Court

Case No : Income-tax Reference No. 54 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Upper Ganges Sugar Mills Ltd.

RESPONDENT

Date of Decision : 11-02-1993

Acts Referred:

Income Tax Act, 1961 — Section 37, 37(4), 80G

Citation : (1993) 114 CTR 375 : (1994) 206 ITR 215 : (1994) 72 TAXMAN 37

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : R.N. Bajoria, I.P. Khaitan and A.K. Dey, for the Appellant;

Judgement

Ajit K. Sengupta, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following three questions :

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in allowing the expenses relating to food, tiffin and salary paid to guest house staff and depreciation on assets used in the assessee's guest houses ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in treating the contribution to the Molasses Storage and Maintenance Reserve created under the Uttar Pradesh Sheera Niyatran (Sansodhan) Adesh, 1974, as a revenue expenditure ?

3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the assessee-company was entitled to deduction u/s 80G in respect of the donation to Vishwa Mangal Trust ?"

2. Shortly stated, the facts are that the assessment year involved is 1978-79. The assessee-company claimed deduction for expenses incurred for providing food, tea, tiffin, etc., to visitors and customers who stayed in its tour guest houses at Seohara and Marhourah. The Income Tax Officer disallowed such

expenses being the sum of Rs. 30,649. There was a further disallowance made by the Income Tax Officer of a sum of Rs. 26,975 being the salary paid to the guest house staff of the assessee. Thus the total aggregate disallowance on account of the guest houses was Rs. 57,628 made u/s 37(4) of the Act. There was yet another disallowance of Rs. 993 being the depreciation claimed on the fixed assets used in the assessee's guest house.

3. The Commissioner of Income Tax (Appeals) deleted the entire addition of Rs. 57,628 as also Rs. 993, the sum which the Assessing Officer disallowed out of the claim for depreciation. On further appeal by the Revenue, the Tribunal upheld the order of the Commissioner of Income Tax (Appeals) in this regard by following its earlier order in the assessee's own case for the assessment year 1977-78. The Revenue's case as urged before us is that Sub-section (4) of Section 37 inserted by the Finance Act, 1970, with effect from April 1, 1970, has imposed a blanket prohibition against the allowance of any expenditure incurred by the assessee after February 28, 1970, on the maintenance of any residential accommodation in the nature of a guest house as well as the allowance of depreciation in respect of any building used as a guest house or depreciation of any asset in the guest house. It is not the assessee's case that the expenses are not for guest houses maintained by the assessee. Therefore, it is urged by learned counsel appearing for the Revenue that the disallowances were correctly made by the Income Tax Officer.

4. We find that the submissions made on behalf of the Revenue have strong force. The assessment order clearly indicates that the disallowance is made by invoking Sub-section (4) of Section 37. The said provisions are extracted below :

"(4) Notwithstanding anything contained in Sub-section (1) or Sub-section (3),--

(i) no allowance shall be made in respect of any expenditure incurred by the assessee after the 28th day of February, 1970, on the maintenance of any residential accommodation in the nature of a guest house (such residential accommodation being hereafter in this sub-section referred to as "guest house") ;

(ii) in relation to the assessment year commencing on the 1st day of April, 1971, or any subsequent assessment year, no allowance shall be made in respect of depreciation of any building used as a guest house or depreciation of any assets in a guest house :

Provided that the aggregate of the expenditure referred to in Clause (i) and the amount of any depreciation referred to in Clause (ii) shall, for the purposes of this sub-section, be reduced by the amount, if any, received from persons using the guest house :

Provided further that nothing in this sub-section shall apply in relation to any guest house maintained as a holiday home if such guest house -

(a) is maintained by an assessee who has throughout the previous year

employed not less than one hundred wholetime employees in a business or profession carried on by him ; and

(b) is intended for the exclusive use of such employees while on leave.

Explanation, --for the purposes of this sub-section-

(i) residential accommodation in the nature of a guest house shall include accommodation hired or reserved by the assessee in a hotel for a period exceeding one hundred and eighty-two days during the previous year ; and

(ii) the expenditure incurred on the maintenance of a guest house shall, in a case where the residential accommodation has been hired by the assessee, include also the rent paid in respect of such accommodation."

5. The language of the sub-section is quite emphatic that no allowance at all is intended in respect of any expenditure incurred after February 28, 1970, on the maintenance of any residential accommodation in the nature of a guest house. No allowance of depreciation is also permissible for such guest house or any assets in such guest house. The prohibition against the allowance of maintenance expenditure of the guest house is unmitigated. The only relaxation is in respect of holiday homes meant for wholetime employees for their exclusive use while on leave ; there is no other relaxation. Where, however, the assessee collects any charge from the boarders, such charges have to reduce the amount of disallowance.

6. This sub-section was inserted by the Finance Act, 1970, having effect from the assessment year 1970-71. The present case involves the assessment year 1978-79. Therefore, the provisions are clearly attracted. Next, it is not also denied that the accommodation in question is in the nature of guest houses. It is not the assessee's case that the guest houses are holiday homes for the use of the employees while on leave nor is it their case that the entire maintenance expenses including the depreciation allowance are made good by the boarders. In such situation, the Tribunal cannot be said to be correct in holding that the expenses incurred were allowable or the depreciation allowance was available in respect of the assets in the guest house.

7. We are also of the opinion that the cost of food provided to the employees in the guest house and the salary paid to them constitute the cost of maintenance of the guest houses because the object of employment of the said employees is the maintenance of the guest houses. It is these employees who maintain and run the guest houses. Therefore, we hold that the Tribunal wrongly allowed the claim.

8. The facts relating to the second question are that the Income Tax Officer disallowed the assessee's claim for deduction of Rs. 4,71,247 being contribution by the assessee towards the fund styled "Molasses Storage Fund". The addition was deleted by the Commissioner of Income Tax (Appeals). On further appeal by the Revenue, the Tribunal upheld such deletion, following its earlier order in the

assessee's own case for the assessment year 1977-78.

9. This identical issue was answered by us in Income Tax Reference No. 166 of 1985 in Commissioner of Income Tax Vs. New India Sugar Mills Ltd., . Following the said decision, we hold that the Tribunal's order is correct.

10. The facts that raise question No. 3 are that, during the relevant year, the assessee made a donation of Rs. 2,57,000 to Vishwa Mangal Trust and claimed relief u/s 80G on the said sum. But the Income Tax Officer did not allow the relief on such donation on the ground that the said trust did not satisfy the condition to qualify for deduction u/s 80G. The Commissioner of Income Tax (Appeals), however, allowed the relief as claimed by the assessee. On the Revenue's appeal, the Tribunal affirmed such allowance of the relief following its order in the assessee's case for the earlier assessment year.

11. We find that this question was answered by this court in the assessee's own case for similar donation to the same donee-trust against the assessee (see Commissioner of Income Tax Vs. Upper Ganges Sugar Mills Ltd., There this court found that one of the purposes of the trust was to establish, maintain and/or grant aid to places of worship. Thus one of its purposes was clearly a religious purpose and it was open to the trustees to spend the entire income or the fund of the trust for this purpose alone. Thus this purpose clearly attracted the mischief of Explanation 3 to Section 80G which mandatorily requires that charitable purpose for Section 80G cannot include any purpose the whole or substantially the whole of which is of a religious nature. Following the said decision, we hold the Tribunal to be wrong. Therefore, the three questions are answered seriatim as follows:

Question No. 1 : Answered in the negative and in favour of the Revenue.

Question No. 2 : Answered in the affirmative and in favour of the assessee.

Question No. 3 : Answered in the negative and in favour of the Revenue.

12. There will be no order as to costs.

Shyamal Kumar Sen, J.

13. I agree.