(2000) 01 CAL CK 0031

In the Calcutta High Court

Case No : Matter No. 207 of 1993

Griffen Laboratories Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 18-01-2000

Acts Referred:
Income Tax Act, 1961 — Section 37(3A), 37(3B)

Citation : (2000) 161 CTR 98 : (2000) 244 ITR 68 : (2002) 123 TAXMAN 1084

Hon'ble Judges : Y.R. Meena, J;G.C. De, J

Bench : Division Bench

Advocate : R.C. Prasad, for the Respondent

Judgement

1. On an application u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the expenses in the nature of publicity medical literatures and journals distributed by the company to the members of medical profession are to be regarded as expenses on ''advertisement, publicity and sales promotion'' within the meaning of Section 37(3A) and (3B) of the Income Tax Act, 1961 ?"

2. The assessee is a manufacturer of medicines. The relevant assessment year is)985-86. During the course of assessment, the Assessing Officer, inter alia, found the assessee claimed Rs. 2,45,780 as expenses on medical literature and journals and also distributed free samples of medicines to doctors and physicians to the tune of Rs. 10,88,920. The Assessing Officer has treated these expenses for advertisement and sales promotion and disallowed 20 per cent, of the expenditure under Sub-sections (3A) and (3B) of Section 37 of the Act. In appeal the Commissioner of Income Tax (Appeals) has allowed the total expenditure on samples but he sustained the order of the Assessing Officer, so far it relates to the expenditure on medical literature and journals, distributed by the assessee-

company. In appeal before the Tribunal, the Tribunal has also held against the assessee that the provisions of Sub-sections (3A) and (3B) of Section 37 are applicable.

3. Learned counsel for the assessee submits that the identical issue has been considered by this court in the case of Commissioner of Income Tax Vs. The Statesman Ltd., and he also referred to the part of the speech of the Finance Minister while inserting the provisions of Sub-sections (3A) and (3B) in the statute. He emphasised mainly on the facts that the provisions of Sub-sections (3A) and (3B) can be invoked only when the expenses are extravagant and avoidable, if the expenses are in the normal course the provisions of Sub-sections (3A) and (3B) are not attracted.

4. Learned counsel for the Revenue, Mr. R. C. Prasad, submits that distribution of literature to doctors and physicians is nothing but an advertisement and publicity of the medicines manufactured by the assessee and that is for sales promotion.

5. On the distribution of free samples of the products, the Commissioner of Income Tax (Appeals) has taken the view that this is not hit by the provisions of Section 37(3A). He has not treated the distribution of samples for advertisement or publicity of sales promotion, but he has treated the distribution of medical literature and journals distributed by the company, for advertisement and sales promotion.

6. Sub-sections (3A) and (3B) of Section 37 were initially introduced by the Finance Act, 1978, with an object to place a curb on extravagant and socially wasteful expenditure that was omitted after two years and again these provisions were introduced by the Finance Act, 1983. While these provisions were introduced in 1983, the hon''ble Finance Minister in his speech addressed in the House reads as under (see [1983] 140 ITR 25) :

"Hon''ble Members must be aware of lavish and wasteful expenditure by trade and industry, particularly on travelling, advertisement and the like. With a view to inculcating a climate of austerity and providing a disincentive to unproductive, avoidable and ostentatious spending by trade and industry, I propose to provide that 20 per cent, of such expenditure will be disallowed in computing the taxable profits.....The effect of these measures, combined with the increase in depreciation allowance will be to provide a marked preferential tax treatment of investment as against unproductive expenditure."

7. While considering a similar question by this court in the case of Commissioner of Income Tax Vs. The Statesman Ltd., after giving the legislative history of Sub-sections (3A) and (3B) of Section 37 of the Act, this court has quoted the circular issued by the Central Board of Direct Taxes at pages 587 and 588 of the Report. The Central Board of Direct Taxes opined that the provisions of Sub-sections (3A) and (3B) of Section 37 of the Act were initially introduced by the Finance Act, 1978, with an object to place a curb on "extravagant and socially wasteful expenditure ... at the cost of the exchequer". The provisions were subsequently

withdrawn after two years and reintroduced by the Finance Act, 1983, which also lasted for two years, that is, for the assessment years 1984-85 and 1985-86. The object of revival of, the provisions was with a view to curbing certain categories of avoidable or ostentatious expenditure by assessees carrying on business or profession.

8. Considering the speech of the hon''ble Finance Minister and the object behind the provisions of Sub-sections (3A) and (3B) of Section 37 of the Act and also the decision of this court aforesaid, the expenditure on medical literature and journals which were distributed to the members of the medical profession cannot be hit by the provisions of Sub-sections (3A) and (3B) of Section 37 of the Income Tax Act, 1961.

9. In view of the aforesaid facts, we are of the view that the provisions of Sub-sections (3A) and (3B) of Section 37 cannot be invoked for disallowance under that provision on medical literature and journals distributed by the company, to the medical professionals.

10. In the light of the above discussions, we answer the question in the negative, that is, in favour of the assessee and against the Revenue.

11. The application is, accordingly, disposed of.

12. All parties are to act on a xeroxed signed copy of this dictated order on the usual undertaking.