

(1989) 03 AHC CK 0030

In the Allahabad High Court

Case No : Income-tax Reference No. 831 of 1977

Phoolchand Gajanand

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 08-03-1989

Acts Referred:

Income Tax Act, 1961 — Section 37(2A), 37(2B)

Citation : (1989) 76 CTR 190 : (1989) 178 ITR 535

Hon'ble Judges : V.N. Khare, J; D.P.S. Chauhan, J

Bench : Division Bench

Advocate : V. Gulati, for the Appellant; Bharatji Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

D.P.S. Chauhan, J.—The Income Tax Appellate Tribunal, vide its order dated July 8, 1977, passed in exercise of the powers u/s 256 of the Income Tax Act, 1961 (hereinafter to be referred to as "the Act"), referred the following question of law for the opinion of this court at the instance of the assessee :

"Whether, on the facts and in the circumstances of the case, the expenditure of Rs. 7,190 could be disallowed u/s 37(2B) of the Act ?"

2. On the basis of the said reference, ITR No. 831 of 1977, was registered in this court.

3. The brief facts are that Phoolchand Gajanand, which is a registered firm, carried on wholesale business and, during the assessment year 1974-75, it claimed deduction of a sum of Rs. 7,190 regarding the messing expenditure of its customers as it was running a mess for the facility of the customers. The Income Tax Officer disallowed the claim u/s 37(2B) of the Act. On appeal being filed, the Appellate Assistant Commissioner of Income Tax accepted the plea of the assessee and, accordingly, allowed the appeal, after setting aside the decision of the Income Tax Officer and allowed the rebate as claimed by the assessee. Aggrieved therefrom, the Income Tax Officer concerned preferred an appeal

before the Income Tax Appellate Tribunal wherein the Tribunal took the view that the expenses incurred in regard to providing messing facilities to the customers by the assessee fell within the category of "in the nature of entertainment expenditure" and allowed the appeal and set aside the decision of the Appellate Assistant Commissioner of Income Tax and restored that of the Income Tax Officer. The Appellate Tribunal relied on a decision of this court in Brij Raman Dass and Sons Vs. Commissioner of Income Tax, . Thereafter, at the instance of the assessee, the aforesaid question was referred to this court by the said Tribunal.

4. The matter came up for hearing before a Division Bench of this court which was of the view that there was divergence of judicial opinion on the question involved in the case. The decision in Commissioner of Income Tax, Gujarat II Vs. Patel Brothers and Co. Ltd., , took a contrary view. In deciding the case of Brij Raman Dass and Sons Vs. Commissioner of Income Tax, , it was held that this court had interpreted the word "entertainment" in a literal sense but the amount which was spent for providing food to the customers was nothing more than extension of common courtesy to a visitor who comes to the assessee in connection with his business. It was also felt that various High Courts which took the view and agreed with the view of this court in the case of Brij Raman Dass and Sons Vs. Commissioner of Income Tax, , have to be tested in the light of the concept of "entertainment" generally held in the society to which the enactment relates. Therefore, the said Bench was of the opinion that the said decision of Brij Raman Dass and Sons Vs. Commissioner of Income Tax, , requires reconsideration, and, accordingly, the following question was referred to a larger Bench (see [1989] 177 ITR 265

"Let the papers be laid before Hon"ble the Chief Justice for constituting a larger Bench to consider the question as to what meaning is to be given to the words "entertainment expenditure" for the purpose of Section 37(2A) and (2B) of the Income Tax Act, 1961."

5. The matter came up before the Full Bench consisting of Hon"ble Dr. Justice B.N. Misra, Hon"ble Mr. Justice Om Prakash and Hon"ble Dr. Justice R. R. Misra and the Full Bench answered the question referred, vide its decision dated December 20, 1988 (Phool Chand Gajanand v. CIT [1989] 177 ITR 265). The opinion of the Full Bench is as quoted here-under (at p. 275) :

"The upshot of the above discussion is that in our considered opinion, the case of Brij Raman Dass and Sons Vs. Commissioner of Income Tax, has been rightly decided and with great respect to the learned judges of the Gujarat High Court and the High Courts which agree with the said view, we are of the definite opinion that the view taken by that court in Commissioner of Income Tax, Gujarat II Vs. Patel Brothers and Co. Ltd., is incorrect in law."

6. The Full Bench was of the view that there is not the slightest doubt that any expenditure incurred by the assessee for the messing of its customers, falls

within the purview of the words "expenditure in the nature of entertainment expenditure" within the meaning of Section 37(2A) and (2B) of the Act and the assessee is, therefore, not entitled to claim the same as a deduction.

7. The Full Bench of this court agreed with the earlier decision of this court in the case of Brij Raman Dass and Sons Vs. Commissioner of Income Tax, , which decision was relied on by the Income Tax Appellate Tribunal in disallowing the claim of the assessee.

8. In view of the decision of a Full Bench, as stated above, this reference is decided accordingly and the decision of the Income Tax Appellate Tribunal on the question referred is maintained. The assessee is not entitled for deduction of expenditure of Rs. 7,190 and the same was rightly disallowed u/s 37(2B) of the Act, being expenditure in the nature of entertainment expenditure.

9. On the basis of the view taken above, the reference is accordingly rejected in the circumstances of the case. We make no order as to costs.