
(1985) 12 RAJ CK 0001

In the Rajasthan High Court

Case No : Income Tax Reference No. 9 of 1981

Shree Sadul Textiles Ltd. (Now Jagatjit Cotton Textiles Mills Ltd.)

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-12-1985

Acts Referred:

Income Tax Act, 1961 — Section 37(2B)

Citation : (1985) 12 RAJ CK 0001

Hon'ble Judges : S.K. Mal Lodha, J;Farooq Hasan, J

Bench : Division Bench

Advocate : Rajendra Mehta, for the Appellant; B.R. Arora, for the Respondent

Judgement

S.K. Mal Lodha, J.—Mr. Rajendra Mehta, learned counsel for the assessee, has submitted an application on December 2, 1985, praying therein that the question involved in this reference is similar to the question which was answered by this court in Devichand Bastimal and Bhanwarlal Manakchand Vs. Commissioner of Income Tax, and so the question may be answered in terms of Devichand Bastimal's case.

2. Mr. B.R. Arora, learned counsel for the Revenue, has not opposed the application.

3. Paper books in this reference have already been submitted by learned counsel for the assessee.

4. At the request of learned counsel appearing for the parties, we have heard the arguments.

5. The Income Tax Appellate Tribunal, Jaipur Bench, Jaipur (for short "the Tribunal"), has referred the following question for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the expenditure of Rs. 11,310 under the head "Entertainment expenses" and Rs. 4,718 under the

head "Guest house expenses" for providing hot and cold drinks, refreshment, etc., to the customers and "veoparies" was entertainment expenditure u/s 37(2B) ?"

6. The assessee is a limited company running a textile mill at Sri Ganganagar. The assessment year involved is 1973-74 for which the relevant previous year is calendar year 1972. On a scrutiny of the miscellaneous expenses account, the Income Tax Officer, "B" Ward, Bikaner, noticed that a total expenditure of Rs. 16,510 had been incurred by the assessee which was of the nature of entertainment expenditure. This amount comprised of Rs. 4,718 as "guest house expenditure", Rs. 11,310 as entertainment expenditure and a mere Rs. 482 spent on bungalow furnishing. The Income Tax Officer treated the entire amount of Rs. 16,510 as entertainment expenditure and disallowed the same. The Income Tax Officer in his order dated March 26, 1976, has stated as under :

"The assessee could not file the details of the expenditure for particular purposes though a specific opportunity was given to him by the Inspecting Assistant Commissioner, Bikaner. It shows that these items have not been maintained. Otherwise also, the entertainment expenses are not allowable. In view of these facts, these expenses amounting to Rs. 16,510 are disallowed and added back in the income of the assessee at the close of the year."

7. The assessee went in appeal and the Appellate Assistant Commissioner dealing with the items of Rs. 4,718 and Rs. 11,310 has observed as under :

"7. Next ground of appeal is regarding disallowance of guest house expenses of Rs. 4,718. The guest house expenses were disallowed by the Income Tax Officer as the appellant failed to file details of expenses for the particular purpose despite specific opportunity afforded to him. So, it was inferred by the Income Tax Officer that no such details were maintained. In his opinion, it was entertainment in nature and clearly dis-allowable. He accordingly added a sum of Rs. 4,718.

8. In view of the non-production of details before the Income Tax Officer, I do not see any reason to interfere at this stage.

9. Next ground of appeal is regarding disallowance of expenses of Rs. 11,310 under the head "Entertainment expenses". Here also no particulars were furnished before the Income Tax Officer or before the Inspecting Assistant Commissioner in spite of specific opportunity afforded to the appellant. So holding them as entertainment in nature, the Income Tax Officer has disallowed the same. In view of my finding in para. 8 above, the disallowance is confirmed."

8. In this reference, we are not concerned with the amount of Rs. 482 which was disallowed, being an expenditure for furnishing of the bungalow.

9. A further appeal was taken to the Tribunal. After considering the contentions of the assessee as well as the Department and the authorities taking divergent views of the various High Courts of the country, it held that such expenditure

does not (sic) constitute entertainment expenditure. An application was moved u/s 256(1) of the Income Tax Act, 1961 (No. XLIII of 1961) (for short "the Act" hereinafter). The Tribunal, at the instance of the assessee, has referred the aforesaid question for the opinion of this court. Learned counsel for the assessee has referred to Devichand Bastimal and Bhanwarlal Manakchand Vs. Commissioner of Income Tax, , wherein Section 37(2B) of the Act as it existed at the relevant time came up for consideration. After referring to the various authorities which were cited by learned counsel for the assessee as well as the Revenue, at page 175 of the report, it was observed as under :

"There is, thus, no doubt that there are two divergent views on the question relating to entertainment expenditure : one taken in Commissioner of Income Tax, Gujarat II Vs. Patel Brothers and Co. Ltd., and the other taken in Commissioner of Income Tax Vs. Veeriah Reddiar, . The tests that have been laid down in Commissioner of Income Tax, Gujarat II Vs. Patel Brothers and Co. Ltd., appear to us to be correct for determining the nature of entertainment expenses. Commissioner of Income Tax, Gujarat II Vs. Patel Brothers and Co. Ltd., has been followed by the Bombay High Court in Commissioner of Income Tax, Vidarbha And Marathwada Vs. Shah Nanji Nagsi, and other High Courts referred to hereinabove. We respectfully agree with the view taken by the Gujarat High Court in Commissioner of Income Tax, Gujarat II Vs. Patel Brothers and Co. Ltd., . "

10. It will be clear that the Division Bench in Devichand Bastimal and Bhanwarlal Manakchand Vs. Commissioner of Income Tax, has relied on Commissioner of Income Tax, Gujarat II Vs. Patel Brothers and Co. Ltd., , wherein the following four tests were laid down for determining the nature of entertainment expenditure (headnote of 156 ITR) :

"1. If the provision of food, drinks or any amusement to a client, constituent or customer is on a lavish and extravagant scale, or is of wasteful nature, it is entertainment per se.

2. If the provision of food or drinks to a client, constituent or customer is in the nature of bare necessity, or by way of ordinary courtesy, or as an express or implied term of the contract of employment spelled out from long-standing practice or custom or trade or business, it will not amount to entertainment.

3. If the provision of food or drinks to a client, customer or constituent is in a liberal and friendly way, it may amount to entertainment having regard to the place, item and cost of such provision.

4. The provision of amusement to a client, customer or constituent by way of hospitality or otherwise will always be entertainment."

11. It may be stated that Commissioner of Income Tax, Gujarat II Vs. Patel Brothers and Co. Ltd., was followed in Commissioner of Income Tax, Vidarbha And Marathwada Vs. Shah Nanji Nagsi, and by other High Courts. The view taken

in Commissioner of Income Tax Vs. Veeriah Reddiar, was dissented from. We have read the decision in Devichand Bastimal and Bhanwarlal Manakchand Vs. Commissioner of Income Tax, and find ourselves completely in agreement with the view taken therein while considering Section 37(2B) of the Act as it existed then. In these circumstances, the Tribunal was not right in holding that the expenses claimed under the head "Entertainment expenditure" amounting to Rs. 11,310 and "guest house expenses" amounting to Rs. 4,718 for providing hot and cold drinks, refreshment, etc., to the customers and veoparies are entertainment expenditure u/s 37(2B) of the Act.

12. Mr. B.R. Arora, learned counsel for the Revenue, submitted that the Tribunal has not given a specific finding as to the aforesaid two amounts claimed by the assessee as entertainment expenses in their entirety. It may be recalled that the Income Tax Officer as well as the Appellate Assistant Commissioner, after holding that the aforesaid two amounts claimed by the assessee are entertainment expenses, observed that they cannot be allowed in the absence of any specific details being given by the assessee, which according to the aforesaid authorities, were not on record. A perusal of the order of the Tribunal shows that the Tribunal has mainly concentrated on the question whether the two items claimed as entertainment expenditure fall within Section 37(2B) of the Act and it has not directed its pointed attention to the question whether the amounts which are claimed as deductible expenses were actually spent as such or not. On the basis of the tests laid down in Devichand Bastimal and Bhanwarlal Manakchand Vs. Commissioner of Income Tax, , which has followed Commissioner of Income Tax, Gujarat II Vs. Patel Brothers and Co. Ltd., , the assessee is entitled to messing expenses, hot and cold drinks, refreshment and other allied expenditure incurred on the constituents or customers on account of bare necessity or by way of ordinary courtesy or inferable from long-standing practice or trade or custom as they are not entertainment expenditure within the meaning of Section 37(2B) of the Act. What quantum should be allowed will be determined by the Tribunal, keeping in view the tests laid down in Devichand Bastimal and Bhanwarlal Manakchand Vs. Commissioner of Income Tax, and the interpretation put on Section 37 of the Act, as it existed then.

13. We answer the question as indicated above.

14. The parties shall bear their own costs of this reference.

15. Let the answer to the question be returned to the Tribunal in accordance with the provisions contained in Section 260(1) of the Act.