

(2012) 08 JH CK 0093
Jharkhand High Court
Case No: Tax Appeal No. 33 of 2000

Commissioner of Income Tax,
Ranchi

APPELLANT

Vs

M/s. Bihar Sponge Iron Ltd.,
Chandil, Singhbhum

RESPONDENT

Date of Decision: Aug. 30, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 37(2A)

Hon'ble Judges: Prakash Tatia, C.J; Jaya Roy, J

Bench: Division Bench

Advocate: Deepak Roshan, Amit Kumar and Rupa Kumari, for the Appellant; Binod Poddar, Mahendra Choudhary, Darshan Poddar, Piyush Poddar and Amrita Sinha, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. Heard learned counsel for the parties. This appeal has been preferred against the order passed by the I.T.A.T. dated 12.05.2000. While admitting the appeal following question was framed by this Court:-

Despite the fact that the Assessing Officer and C.I.T. (Appeals) disallowed the claim of the assessee on the ground that the details of the items and the expenditures with respect to the advertisement and promotion were not furnished by the assessee, the Tribunal set aside the orders of the Assessing Officer and C.I.T. (Appeals) without considering this question before it.

2. However, learned counsel for the appellant submits that in addition to the above question the appellant is also challenging the finding of the I.T.A.T whereby the I.T.A.T. has set aside the order passed by the A.O. and the C.I.T. (Appeal) in relation to the disallowance of Rs. 8,24,007/- which alleged to have been incurred by the

Assessee for giving gifts and articles or presentation distributed to the various persons including the employees of the Assessing Company.

3. We have considered the submission of the learned counsel for the appellant and we are of the considered opinion that so far as the gift articles are concerned, the I.T.A.T held that though on gift articles there was no Company Logo printed but yet there was Company's official rubber stamp on gift articles, therefore, the gift articles were for the purpose of incentive for promotion of the business. In view of the above reason, the I.T.A.T held that the Assessee is entitled for the additional benefit and confirmed by the lower authority except a sum of Rs. 6,454/- which was disowned by the Assessee in computation of the total income. The I.T.A.T relied upon the orders passed in the earlier case and held that there was element of advertisement in distribution of these gift articles, therefore, the Assessee was entitled to the benefit.

4. Learned I.T.A.T also held that the Assessee has claimed Rs. 5,39,343/- on account of entertainment expenditure whereas C.I.T. (Appeal) has taken statutory deduction of Rs. 5,000/- only. However, the I.T.A.T held that Section 37(2A) of the I.T. Act will have to be applied in too which has omitted Finance Act, 1992 with effect from 1st April, 1993. Therefore, the I.T.A.T sent the matter back to the Assessing Officer to implement Section 37(2A) after necessary computation.

5. In view of the above reason, we are of the considered opinion that where the particular articles were the gift articles and were used as incentive for promotion of the business is concerned, that issue has been decided by the I.T.A.T after considering the fact of the case and substantially it is a question of fact. By the same order the I.T.A.T has already held that Section 37(2A) which was omitted by Finance Act, 1992 with effect from 1st April, 1993, has no effect and the Assessee was entitled to the benefit u/s 37(2A) of the I.T. Act.

6. We are of the considered opinion that no error was committed by the I.T.A.T. in the impugned order. Therefore, there is no merit in this appeal. The appeal is dismissed.