

(1996) 08 MP CK 0015

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No's. 546-548 of 1994

Commissioner of Income Tax

APPELLANT

Vs

Kohinoor Paper Products

RESPONDENT

Date of Decision: Aug. 27, 1996

Acts Referred:

- Income Tax Act, 1961 - Section 28, 37(1)

Citation: (1997) 226 ITR 220 : (1997) 92 TAXMAN 316

Hon'ble Judges: Shambhusingh, J; A.R. Tiwari, J

Bench: Division Bench

Advocate: Vivek Saran, for the Appellant; J.W. Mahajan, for the Respondent

Judgement

A.R. Tiwari, J.

These three miscellaneous civil cases are heard as connected matters and are being disposed of by this common order.

2. The applicant (Commissioner of Income Tax, Bhopal) has filed these applications u/s 256(2) of the Income Tax Act, 1961 (for short the "Act"), seeking a direction to the Tribunal to state the cases and refer the questions, labelled as of law, as extracted below for separate assessment years. These applications relate to the consolidated order passed by the Tribunal on May 10, 1993, in I. T. A Nos. 664/Ind. of 1988, 410/Ind. of 1990 and 453/Ind. of 1991 for the assessment years 1983-84 to 1985-86. These applications came to be filed because the applications submitted for reference and registered as R. A. Nos. 93 to 95/Ind. of 1993 were rejected on April 29, 1994.

3. R. A. No. 94/Ind. of 1993-assessment year 1984-85 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing Rs. 42,974 spent on the education of a partner in U.S.A. as business expenditure ?"

4. R. A. No. 95/Ind. of 1993-assessment year 1985-86 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing Rs. 1,25,573 spent on the education of a partner in U.S.A. as business expenditure ?"

5. R. A. No. 93/Ind. of 1993-assessment year 1983-84 :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in allowing Rs. 64,360 spent on the education of a partner in U.S.A. as business expenditure ?"

6. Briefly stated, the facts of the case are the non-applicant-assessee-firm was constituted on June 11, 1979. It consisted of three partners, namely, Shri Gopal Chandra Bhargava, his younger brother, Shri Narendra Bhargava, and his son, Shri Deepak Bhargava. At the time of constitution of the firm, Shri Deepak Bhargava was a student of B.Sc. After obtaining an M.Sc. degree in 1982, he proceeded to the U. S. A. for higher studies and joined Western Michigan University. The expenses incurred on his education are claimed as spent on foreign tour. The expenditure incurred by the firm amounted to Rs. 64,360 for the assessment year 1983-84, Rs. 42,974 for the assessment year 1984-85 and Rs. 1,25,573 for the assessment year 1985-86. The Assessing Officer disallowed the claim. His order was confirmed by the Commissioner of Income Tax (Appeals). The assessee, then, filed the appeal before the Tribunal. The Tribunal held that the foreign tour of Shri Deepak Bhargava to the U. S. A. for higher studies was exclusively for the purposes of the business of the assessee. The Tribunal, therefore, allowed the appeal and thus allowed the deduction of the entire expenditure for these three years treating the same as revenue expenditure. Aggrieved, the Department filed the applications u/s 256(1) of the Act. The applications were rejected. This is how the applicant has filed these applications u/s 256(2) of the Act.

7. We have heard Shri Vivek Sharan, learned counsel for the applicant, and Shri J.W. Mahajan, learned counsel for the non-applicant.

8. Section 37(1) of the Act provides as under ;

" 37. (1) Any expenditure (not being expenditure of the nature described in Sections 30 to 36 ... and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession"."

9. The Tribunal took the view as under :

" It cannot be gainsaid that expenditure incurred for training of the personnel for advancement of the business is a revenue expenditure. In the case of Additional Commissioner of Income Tax Vs. Southern Leather Industries, , the partners of the

assessee-firm undertook foreign tours for attending the International Trade Fair with intent to advance the business. The expenditure on their tour has been held as revenue expenditure. In the case of [Hindusthan Aluminium Corporation Ltd. Vs. Commissioner of Income Tax,](#), the assessee had sent 28 of its employees to the U. S. A. for practical training and experience in running an aluminium factory. The expenditure incurred on their training was held as an allowable deduction. In the instant case, Shri Deepak Bhargava was sent to the U. S. A. for higher studies but it was obviously for the business purposes of the assessee-firm. His stay abroad was though for a long period but none the less it is a fact that after completion of his studies he kept himself engaged in the business of the firm and his education and experience proved beneficial to the firm. Thus, the subsequent events do establish the intent and purpose of sending Shri Deepak Bhargava abroad and spending on his education. The entire expenditure is, therefore, allowable. It is directed to be allowed as revenue expenditure in all the three assessment years."

10. In [Hindusthan Aluminium Corporation Ltd. Vs. Commissioner of Income Tax,](#), it was held that expenditure incurred in sending some employees to the U. S. A. for training and experience in running the factory, was a revenue expenditure and as such was an allowable deduction in terms of Section 37 of the Act.

11. In the instant case, the Tribunal concluded that after completion of studies, the aforesaid person kept himself engaged in the business of the firm and his higher education in U. S. A. and the experience gained by him proved beneficial to the firm. The Tribunal found that subsequent events also established the intention and purpose of sending Shri Deepak Bhargava abroad to return with better education and greater experience.

12. We are satisfied that the Tribunal committed no error in reaching the conclusion which is not shown to be perverse in any manner. We find that the expenditure so incurred was not in the nature of capital expenditure or for personal expenses. It was expended wholly and exclusively for the purpose of business of the assessee. That being so, such amount was properly allowed in computing the income chargeable u/s 28 of the Act.

13. The conclusion is based on appreciation of facts and, as such, it does not give rise to the questions as proposed. In [Commissioner of Income Tax \(Central\), Calcutta Vs. Ashoka Marketing Ltd.,](#) and [Commissioner of Income Tax, Andhra Pradesh Vs. Kotrika Venkataswamy and Sons,](#), it is held that the conclusion based on appreciation of facts does not give rise to any question of law.

14. In view of the aforesaid factual matrix and legal position, we are satisfied that the aforesaid questions are not referable questions of law and, as such, these cases are meritless.

15. We, therefore, dismiss these miscellaneous civil cases with no orders as to costs. Counsel fee for each side in each case, is however, fixed at Rs. 750, if certified.

16. Retain this order in the record of Miscellaneous Civil Case No. 546 of 1994 and place its copy each in the other two remaining Miscellaneous Civil Cases Nos. 547 and 548 of 1994.