

(2005) 01 CAL CK 0009

Calcutta High Court

Case No: IT Appeal No. 107 of 2001

Ravi Marketing (P) Ltd.

APPELLANT

Vs

Commissioner of
Income Tax

RESPONDENT

Date of Decision: Jan. 18, 2005

Acts Referred:

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

Citation: (2005) 198 CTR 354 : (2006) 280 ITR 519 : (2005) 147 TAXMAN 299

Hon'ble Judges: Soumitra Pal, J; D.K. Seth, J

Bench: Division Bench

Advocate: S. Bagchi, K.L. Bhowmick and G.R. Sharma, for the Appellant; S.N. Dutta, for the Respondent

Final Decision: Allowed

Judgement

D.K. Seth, J.

Facts :

1. In the present case in respect of the assessment for the year 1988-89, the AO had disallowed the sum of Rs. 9,25,983 out of Rs. 9,37,257.40 claimed by the assessee to have been spent on sales promotion since split up as : (i) conference--Rs. 6,26,538.25 (ii) articles presented--Rs. 2,99,445.49 (iii) sales promotion--Rs. 11,273.55.

1.1 The AO held that the expenditure was incurred on entertainment like lodging, food, and presentation of valuable gifts to distributors and guests. The articles presented were gold necklace, gold rings, gold bangles, silver articles and other articles to various distributors along with the lodging and boarding. It had also found that these expenses although were booked under sales -promotion expenses but those were actually in the nature of entertainment.

1.2 On the other hand the CIT(A) held that the expenditure was actually incurred in holding conference with the various distributors and agents, a normal practice in this line of business carried on by the assessee. The articles were presented to the distributors and agents as an incentive to increase the sales of the company's products and the presentations were as per specific schemes floated by the company. It further held that from the details and facts presented before him, it is apparent that there was no entertainment of customers nor were any articles presented to the dealers which had any advertisement value. It further found that the conferences were held and the articles were presented out of the commercial expedience and as such these are allowable as normal business expenditure u/s 37(1) of the IT Act, 1961. It also found that the AO did not bring on record any fact to prove that these expenses were incurred to entertain the customers and, as such, it could not be treated as entertainment expenses. Therefore, it deleted the disallowance of Rs. 9,25,983.

1.3 The learned Tribunal on the other hand had found from the materials available on record (1) that the AO had no doubt about the genuineness of the expenditure incurred; but his objection was that the same was exceeding the limit prescribed u/s 37, and considered those expenditures as entertainment expenses; (2) but the fact remains that he had dealt with the entertainment separately and disallowed Rs. 69,993; (3) therefore, he could not delete on account of entertainment twice. The learned Tribunal found that the expenditures were on the higher side and that the scheme for the sales promotion was submitted to the AO. It also recorded that in the subsequent year such expenditure was selected under the said head. After having so found, the learned Tribunal recorded that considering the totality of the facts and circumstances of the case and according to the doctrine of justice, equality and good conscience, the orders of CIT(A) and the AO were modified restricting the disallowance to Rs. 3,00,000 under the said head and thus the assessee would get a relief of Rs. 6,25,983."

Appellant's contention :

2. Mr. S. Bagchi, learned Counsel for the appellant, contends that it is the qualitative nature of the expenditure, which makes the assessee eligible for deduction, not the quantitative nature that would stand in the way. He relied on the decisions in [Commissioner of Income Tax Vs. Kirloskar Oil Engines Ltd.](#), and [Commissioner of Income Tax Vs. Chemcrown \(India\) Ltd.](#), in order to substantiate his contention on this point. He also relied on [Commissioner of Income Tax, West Bengal Vs. Edward Keventer \(Private\) Ltd.](#), in order to contend that it is only when the test is satisfied and the eligibility is fulfilled the benefit cannot be denied. Once the test is fulfilled the IT authority has no other alternative but to allow the eligible deduction.

Respondent's contention :

3. Mr. Sailen Dutta, learned Counsel on behalf of the Department, on the other hand, pointed out that the AO had found that the expenditure was in the nature of entertainment

from the break-up pointed out in his order. He contends that only Rs. 11,273.55 was spent on sales promotion. The rest were spent on conference and presentations of very high value and that the company had incurred loss in that particular year. These amounts have been spent on food, beverage and presentation, which, according to him, are costly. On the basis of the findings of the learned Tribunal that these were on the higher side, these are to be treated as entertainment and accordingly would be eligible for deduction only within the restriction provided in the said section. He drew our attention to the various Sub-sections of Section 37 and sought to distinguish the decisions cited by Mr. Bagchi.

Expenditure on seminar/conference of distributors/agents for sales promotion : Whether entertainment or business expenditure :

4. After having heard the learned Counsel for the parties it appears that the CIT(A) had found that there was no doubt about the genuineness of the expenditure and that these expenditures were not in the nature of entertainment. The learned Tribunal has also recorded that there was no doubt about the genuineness of the expenditure incurred and at the same time it had disallowed the deletion by the AO on the ground that he sought to delete entertainment expenditure twice. Once that is deleted by the learned Tribunal on the ground that the entertainment expenditure cannot be deleted twice, the said expenditure can no more be treated as entertainment expenditure by the learned Tribunal. Once qualitative nature of the expenditure is treated to be something other than entertainment, the same must be business expenditure.

4.1 Whether an expenditure, expedient for the purpose of promotion of sales or the business and the amount and the manner in which to be expended, is to be looked at by the authorities under the IT Act or the Court from the viewpoint of the assessee not from its armchair. The assessee knows his business. It is his success or failure in the business, which is material to him. It is not for the Court or the IT authority to suggest or advise, to presume or surmise as to the expedience. What the authorities under the Act can do is that they can examine the genuineness of the expenditure and the purpose for which it was expended. Once it is established that the amount was genuinely expended and it was expended for a particular purpose, the only discretion that is left to the authority under the Act is to apply the law on the basis of such established fact or finding. If the purpose for which it is expended is eligible for deduction, under a particular head, no discretion is left to the authority either to surmise with the quantum that ought to have been spent or to surmise or presume the purpose differently and convert the same under some other head.

4.2 Business is promoted by increased production or acquisition of stocks, etc. Increase in production or acquisition of stock is aimed at earning income out of its sale or distribution, as the case may be. Promotion of sale is always expedient for promotion of business. How and in what manner, in these days of competitive market, sale can be promoted are matters of business expedience, in the field whereof the assessee is not

only the expert but also the sole decider. Holding of conferences or seminars of distributors or agents is one of the accepted methods or manners of sales promotion. How and to what extent it would be expedient for the business can be decided by the assessee in its wisdom. Whether by reason thereof he gains or fails is immaterial. It is definitely an expenditure expended for the purpose of his business. It is the field where neither the authorities under the Act nor the Court can venture. The scope for the authorities under the Act or the Court is confined only in examining the purpose and the genuineness of the expenditure, neither the expedience nor the quantum.

4.3 Sales promotion is definitely a business expenditure as was held in CIT v. Chemcrown (India) Ltd. (supra) wherein this Court (D.K. Seth and R.N. Sinha, JJ.) had occasion to hold that the expenses of seminar for business promotion is definitely a business expenditure aimed at or necessary for increasing and promoting sales. An exercise for sales promotion would definitely be a business expense.

4.4 The Bombay High Court in Kirloskar Oil Engines Ltd. (supra) held that no separate account for entertainment expenditure was maintained in the books of account of the assessee. It held that the expenditure incurred for giving presentation to foreign distributors and meeting the expenses of travel, food and lodging which was a customary practice was not to be treated as entertainment expenditure. And that the seminar was arranged in connection with the assessee's business. The expenditure for travel, boarding and lodging of the assessee's distributors attending the seminar was expenditure incurred in connection with the assessee's business. We are in agreement with the said view.

4.5 The question remains that whether these expenses were incurred for the purpose of business of the assessee or not. Unless such expenditure is in the nature of entertainment or in the nature of advertisement, and is aimed at promoting sales, in that event, the qualitative nature of the expenditure is satisfied; and then it becomes an expenditure otherwise eligible for deduction as business expenditure u/s 37(1) not being an expenditure in the nature of entertainment. Once it is so found, there is no quantitative unit or standard that could be enforced or introduced by the authorities under the Act. The fiscal law does not permit of any abstract ideas of the authority deciding the matter. As soon the expenditure satisfies the eligibility criteria, it becomes eligible for deduction; and if it does not, it would not be eligible for deduction. There cannot be anything in between.

4.6 The principle of equality or justice or good conscience cannot be introduced to reduce quantitatively what is qualitatively found to be eligible. The fiscal law does not admit of any uncertainty or of any ambiguity. It must be clear. Either it qualifies or it does not. If it, is not clear, if there is any ambiguity, the benefit would go in favour of the assessee. The principles of equity, equality, justice or good conscience have no role to play.

Conclusion :

5. Having regard to the facts and circumstances of this case, applying the above test, it is apparent to us that the AO, the CIT(A) and the learned Tribunal found that the expenditure was genuine and was expended for the purpose of conference of distributors and agents and for giving presents, which had no advertising value to them for promotion of sales according to the scheme formulated in connection with the assessee's business. Thus, it is not in the nature of entertainment expenditure but an expenditure incurred for the purpose of the assessee's business. As such it is eligible for deduction u/s 37(1) of the Act. The disallowance of Rs. 3,00,000 by the learned Tribunal, therefore, cannot be sustained.

Order :

6. In the circumstances, we set aside the order of the learned Tribunal so far as it relates to the disallowance to the extent of Rs. 3,00,000. The order of the CIT(A) without the deletion or without the disallowance as directed by the learned Tribunal is hereby affirmed.

6.1 The question No. 1 is answered in the affirmative in favour of the assessee.

6.2 The question No. 2 is also answered in the affirmative in favour of the assessee.

6.3 The appeal succeeds and is, thus, allowed.

6.4 There will, however, be no order as to costs.

Soumitra Pal, J.

7. I agree.