

Assistant Commissioner of Vs. Universal Electrics Ltd.

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Apr-03-1991

Reported in : (1991)37ITD518(Kol.)

Judge : Y Upadhyay, V Gandhi

Appellant : Assistant Commissioner of

Respondent : Universal Electrics Ltd.

Judgement :

1. This appeal by the revenue for the assessment year 1984-85 is directed against the order of the CIT (Appeals) dated 16-5-1988. The following grounds of appeal have been raised : 1. On the facts and in the circumstances of the case, Learned CIT (A) erred in holding that the Leave and Licence fee of Rs. 8,25,000 payable to Everlite Pvt. Ltd. is allowable as revenue expenses.

2. On the facts and in the circumstances of the case, Learned CIT(A) erred in deleting the disallowance of Rs. 8,25,000 being leave and licence fee payable to Everlite Pvt. Ltd. 3. On the facts and in the circumstances of the case, Learned CIT(A) erred in directing to allow Investment Allowance on Boring Rigs not used for Investment allowance for the purpose of assessee's business.

4. On the facts and in the circumstances of the case, Learned CIT(A) erred in directing to exclude the expense for hiring registered taxies from the purview of calculation for disallowance under Section 37(3A).

2. The first three grounds being covered by orders of Appellate Tribunal in assessee's own case for earlier years we would take up the last ground of appeal first. The facts relating to the said ground are that on scrutiny of the "Conveyance Account" the Assessing Officer found that taxi hire charges, bus fare, tram fare, auto rickshaw hire charges, etc. were debited in the above account. He was of the view that taxi hire charges were covered by provisions of Section 37(3A) of the Income-tax Act. From the details, the Assessing Officer estimated taxi hire charges at Rs. 6 lacs for purposes of applying the above-said provision. The assessee as per letter dated 28-6-1988 accepted as correct the above estimate of hire charges at Rs. 6 lacs. It, however, disputed the application of provisions of Section 37(3A) to the taxi hire charges in appeal before the CIT (Appeals).

3. Before the CIT(Appeals) it was contended that provision of Section 37(3A) was applicable only to hire charges paid for engaging private cars and not to taxi fares paid as conveyance for carrying on day to day business activities. The learned CIT(Appeals) accepted this contention and issued the following directions : The contention of the appellant in this regard appears to be correct. The scope of Section 37(3B) seems to take into consideration only private taxies and other motor cars specifically hired. It does not seem to include even ordinary taxi fares. I would, therefore, direct the ITO to exclude ordinary taxi hire charges from the purview of the calculation of disallowability under Section 37(3A). At the same time again he should take into consideration private taxies and other motor cars hired on hourly or distance basis.

4. The revenue is aggrieved and has brought the issue in appeal before the Appellate Tribunal. Before us Shri J. Mukhopadhyay, the learned departmental representative strongly contended that provision of Section 37(3 A) was applicable to all kinds of hire charges incurred by the assessee. The learned CIT(Appeals) was not justified in drawing a distinction between the hire charges paid for public or private taxies and other motor cars hired on hourly or other basis. He, therefore, submitted that the order of the Assessing Officer on this point should be restored. Shri A.K. Gupta, the learned counsel for the assessee, on the other hand, contended that the above provision was applicable only to hire charges paid for private cars engaged for a specified period.

The provision was not applicable to taxies used as local conveyance for carrying on day to day business activities. He laid stress on the word "chartered" and contended that payment of taxi charges for local business use cannot tantamount to chartering taxies. Like aircraft chartering of private motor cars was intended to be discouraged but legislature never intended to discourage use of taxies as a local conveyance. The disallowance of taxi charges used locally would lead to absurd results not intended by the legislature. Shri Gupta further submitted that air travelling expenses by taking one or more seats in aircrafts would not be hit by the provision. Such air travel cannot be treated as chartering an aircraft. By the same analogy, according to Shri Gupta, local use of taxies was not covered by the provision.

5. We have carefully considered the rival submissions of parties. The relevant provision requiring consideration is as under: Section 37(3A) : Notwithstanding anything contained in Sub-section (1), where the expenditure or, as the case may be, the aggregate expenditure incurred by an assessee on any one or more of the items specified in Sub-section (3B) exceeds one hundred thousand rupees, twenty per cent of such excess shall not be allowed as deduction in computing the income chargeable under the head "Profits and gains of business or profession.

Section 37(3B): The expenditure referred to in Sub-section (3A) is that incurred on- Explanation (c) : Expenditure on running and maintenance of aircraft and motor cars shall include - (i)expenditure incurred on chartering any aircraft and expenditure on hire charges for engaging cars plied for hire; (ii) conveyance allowance paid to employees and, where the assessee is a company, conveyance allowance paid to its directors also.

6. The word "hire" is synonymous with word "charter", hire being the general term while charter commonly applied to vessels whether they be ships or ferry boats. Again "hire" simply means price, reward or compensation paid or contracted to be paid for temporary use of a thing. The term 'charges' when added to hire reflects distinguishing character that use of the thing is not gratuitous. Thus, in our opinion, legislature has employed clear language in Explanation (c) to the section giving extended meaning to the expression "expenditure" on running and maintenance of

aircrafts and motor cars. Even expenditure incurred on chartering an aircraft, hire charges for engaging cars plied for hire as also conveyance allowance paid to employees are covered by the expression. The aforesaid extended meaning and particularly the words "car plied for hire" should cover hire charges for all kinds of taxies and motor cars and in all circumstances, no distinction can be maintained between private and public taxies. There is absolutely no scope to restrict application of provision to private taxies. We are, therefore, unable to subscribe to the view taken by the learned CIT(Appeals).

7. The other arguments of Shri Gupta that literal application of provision would lead to absurd result cannot also be accepted. It is not disputed on behalf of the assessee that the provisions of Section 37(3A) is applicable to expenditure admissible under Section 37(1) and which are laid out and expended wholly and exclusively for the purposes of assessee's business. The provision/was introduced by the legislature to restrict colossal and wasteful expenditure incurred by the tax payer on running and maintenance of aircrafts and motor cars. The legislature, therefore, provide that if aggregate of expenditure incurred on any one or more of items specified in subsection (3B) exceeds one hundred thousand rupees, twenty per cent of such excess should be disallowed. Thus, expenditure incurred on items mentioned in subsection (3B) in excess of one hundred thousand rupees was considered to be unreasonable and on that basis part of it was directed to be disallowed. The provision is applicable to expenditure like advertisement, maintenance of car, payment to hotel, conveyance allowance to employees, etc., all incurred wholly and exclusively for purposes of the business. Therefore, there is no difficulty in holding that "hire charges" incurred for engaging cars plied for hire even for local use are covered by the expression. The only requirement being that the expenditure should be "hire charges" for engaging cars plied for hire. As regards unreasonableness of absurdity of the provision, we may state that if the Legislature in its wisdom thought that there should be limitation in the matter of deduction under certain heads it is not possible for the courts to intervene. It is, however, clear that the provision in question did not achieve the desired result and was, therefore, totally omitted from the statute by the Finance Act, 1985 with effect from 1-4-1986. All the same, the provision is required to be given effect to as long as it remained on the statute book. For all the above reasons we are of the view

that the learned CIT (Appeals) was not correct in interfering with the order of the assessing officer.

Accordingly, we set aside his order and restore that of the assessing officer.

8. to 11. [These paras are not reproduced here as they involve minor issues.]

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