

**Arbindo Textiles Vs. Assistant Commissioner of Income Tax.**

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**Court :** Delhi

**Decided On :** Mar-31-1995

**Reported in :** (1995)53TTJ(Del)55

**Appeal No. :** ITA No. 1918/Del/1990; Asst. yr. 1988-89

**Appellant :** Arbindo Textiles

**Respondent :** Assistant Commissioner of Income Tax.

**Judgement :**

ORDER

A. SATYANARAYANA, A.M. :

This appeal filed by the assessed is against the order of the CIT(A) dt. 5th December, 1989 for the asst. yr. 1988-89 for which the previous year ended on 31st March, 1988.

2. The assessed is a partnership consisting of S/Shri Somnath Grover and Arbindo Grover having 60% and 40% shares respectively. It is engaged in the business of textiles being the sub-agent of Bombay Dyeing & . For the assessment year under consideration, the assessed furnished return of income on 30th July, 1988 declaring total income of Rs. 2,72,450. In the assessment order passed on 23rd February, 1989 under s. 143(3) the Assessing Officer disallowed Rs. 25,438 being advertisement expenditure by observing as under :

'It is seen that the assessed has debited advertisement expenditure this year at Rs. 25,991. Last year it was at Rs. 250. Scrutiny of the books reveal that the expenditure of Rs. 25,438 was on account of debit note raised by M/s Lakhmi Chand Matwal Chand. It is claimed that the advertisement was done on behalf of the assessee. M/s Lakhmi Chand Matwal Chand is close concern of the assessee. There was an agreement between Bombay Dyeing . with M/s Lakhmi Chand Matwal Chand to incur expenditure for advertisement. No evidence has been produced if any advertisement was undertaken on behalf of the assessee, i.e., M/s Arbindo Textiles. There was no agreement with M/s Arbindo Textiles by M/s Bombay Dyeing Mfg. Co. whereunder the liability of the assessed to incur expenditure at Rs. 25,438 can be said. The assessed no doubt purchases its goods from M/s Lakhmi Chand Matwal Chand but the benefit of advertisement cannot be said to have accrued to the assessed directly, it was remotely connected. Since advertisement was not done in the name of the assessed firm, the claim of expenditure just by debit note dt. 31st March, 1988 cannot be said as a genuine expenditure to be covered under s. 37 of the Act. The same is thus not allowed.'

He also made additions of Rs. 4,705 and Rs. 3,360 being 1/4th on depreciation on motor car and 1/4th on motor car expenses 'as in the past'. No reasons were given for the said allowance. Aggrieved by the same, the assessed carried the matter in appeal before the CIT(A).

3. According to the CIT(A), before him the assessor's counsel contended that M/s Lakhmi Chand Matwal Chand is an agent of Bombay Dyeing under obligation to incur advertisement expenses to the extent of 3% of the purchases made from its principals and 1/3rd of such expenses are reimbursed by Bombay Dyeing whereas the balance 2/3rds are recovered from the sub-agent. It was also contended that in the asst. yrs. 1985-86 and 1986-87 debit notes had been received from M/s Lakhmi Chand Matwal Chand which had been debited to the P&L; account and no such disallowance had been made by the Assessing Officer. But, the CIT(A) confirmed the disallowance by observing as under :

'4. On careful consideration of the facts and circumstances of the case as well as submissions made before me I am inclined to uphold the disallowance of Rs. 25,438 made by the Assessing Officer. M/s Lakhmi Chand Matwal Chand is an allied concern of the appellant and Shri Arbindo Grover is a partner in both the firms. On perusal of details it appears that debit note on account of advertisement on arbitrary basis are issued by M/s Lakhmi Chand Matwal Chand and the same are accepted by the appellant and debited to P&L; account for example in asst. yr. 1985-86 such debit notes had been issued @ 1% and 1.75% of the purchases made by the appellant. In the asst. yr. 1986-87 debit note had been issued @ 0.25% of the purchases whereas in asst. yr. 1987-88 no such debit note has been issued and no such expenses have been claimed by the appellant. On these facts it appears to me that the expenses are claimed on arbitrary basis and the same are not dictated by considerations of business expediency. M/s Lakhmi Chand Matwal Chand is an allied concern and the entire arrangement is an attempt to make adjustments in the income of the various concerns of the group. No advertisement expenses as such has been incurred by the appellant and there is no evidence that there was any agreement with M/s Lakhmi Chand Matwal Chand for sharing any specified percentage of any advertisement expenses which might be incurred by the said firm. I am inclined to uphold the disallowance on the ground that the expenditure in question does not represent business expenditure. The contentions of the appellant to the effect that no such disallowance had been made in earlier years, to my mind does not clinch the issue against the Department. In the earlier years the issue of admissibility of the expenditure in question has not been considered and examined by the Assessing Officer. In any case, in the immediately preceding asst. yr. 1986-87 no such expenditure has been claimed by the appellant. In the circumstances and keeping in view the aforesaid discussions I hereby uphold the disallowance of Rs. 25,438. Ground No. 1 is, therefore, dismissed.'

He also upheld the disallowance under the heads 'depreciation on car and car expenses' by observing as under :

'6. Ground No. 3 is against the disallowance of 1/4th of the car expenses for personal use of the car by the partners. The disallowance appears to be fair and

reasonable and is hereby upheld.

7. Ground No. 4 is against the disallowance of 1/4th of car depreciation. Car expenses used for personal use by the partners and the disallowance of car expenses to the extent of 1/4th has already been upheld by me above. I hereby uphold the disallowance of 1/4th of the car depreciation.'

Dissatisfied with the order of the CIT(A), the assessed preferred the present appeal before the Tribunal.

4. The assessor's counsel filed two paper books - one consisting of 23 pages and another consisting of 9 pages. The arguments of the assessor's counsel were to the following effect. The assessed carries on business of wholesale cloth. It is a sub-agent of cotton fabrics of the Bombay Dyeing & ., Bombay. The main agent for Delhi is M/s Lakhmi Chand Matwal Chand. There is keen competition in the trade in modern world. So, to keep abreast with other competitors of the trade, advertisement and publicity is an integral part of the trade. Since this expense is incurred wholly and exclusively for the purpose of business it is allowable under s. 37. Advertisement expenses incurred by the assessed were always allowed in the past. Amounts of Rs. 69,879, Rs. 13,772 and Rs. 250 were allowed in the earlier asst. yrs. 1985-86, 1986-87 and 1987-88, respectively. These details are given at page 3 of the paper book. For the asst. yr. 1989-90 Rs. 26,687 was allowed by the CIT(A) by his order dt. 18th November, 1991 which is given at pages 18 to 20 of the paper book. The Assessing Officer failed to appreciate the facts of the case. There is an implied agreement between the assessed and its principals which is proved from the following facts. For the sale of its cotton fabrics, the Bombay Dyeing Mills had appointed M/s Lakhmi Chand Matwal Chand ('LCMC' for short) as their sole agent who in turn had appointed two sub-agents, (1) M/s. Arbindo Textiles, the assessed (for tax free goods in sales-tax.) (2) M/s Lakhmi Chand Matwal Chand & Co. (for goods taxable under sales-tax Act).

The entire goods are passed on by LCMC to these two sub-agents at invoice price except for a little handling charges. LCMC gets 2% commission from Bombay Dyeing Mills on total purchases. They do not earn any profit on sale of the goods which is earned by the two sub-agents who make the entire sales to the market.

Under a plan chalked before the beginning of the year, Bombay Dyeing Mills sets a target for sale in Delhi and stipulates that 3% advertisement will be incurred thereon. Out of which 1/3rd is borne by the Mills and 2/3rd is borne by the sole agent LCMC. Since LCMC, the sole agent does not sell any goods direct to consumers but sells them through sub-agents, they share their profit on the sales made in Delhi with these two sub-agents. So they in turn charge 0.4% towards advertisement on purchases made by these two sub-agents. All the advertisement is made under the control and guidance of the Mills in the name of Bombay Dyeing Mills because the publicity launched is for the sale of Bombay Dyeing Mills goods only. So, no publicity is done in the name of the agent or the sub-agents. Since the benefit of sale is shared by the agent and the sub-agents they also share the publicity expenses irrespective of the fact that no publicity is done in their own name either by them or by the Mills. This practice is being followed year after year and the expenditure has always been allowed in the past as having been incurred wholly and exclusively for the purposes of the business. The debit note issued by the LCMC dt. 31st March, 1988 for Rs. 25,438 can be seen at page 11 of the paper book. Debit notes for the earlier years can be seen at pages 8 to 10 of the paper book. In the asst. yr. 1990-91 there was no disallowance in the advertisement expenses as can be seen from the copy of the assessment order dt. 27th March, 1991 passed under s. 143(3) given at pages 21 to 23 of the paper book. Explanation dt. 22nd February, 1989 given in the matter of advertisement expenditure to the Assessing Officer can be seen at page 4 of the paper book. The letter dt. 11th June, 1987 from Bombay Dyeing Mills to LCMC for sharing the advertisement expenditure in the accounting year ending on 31st March, 1988 is given at pages 1 and 2 of the paper book No. 2. LCMC incurred advertisement expenditure of Rs. 2,51,402. Out of that they have recovered from the sub-agents Rs. 2,18,336. There was a net debit of Rs. 33,066 only in the advertisement account in the books of LCMC. This can be seen at pages 3 to 7 of the paper book No. 2. In the assessment order of LCMC for the asst. yr. 1988-89 dt. 12th October, 1989 passed under s.143(3), the amount of Rs. 33,066 was fully allowed except disallowance of Rs. 900 which can be seen at page 9 of the paper book No. 2. Share paid to LCMC for the expenditure on advertisement is allowable as per the judgment of the Delhi High Court in the case of Modi Spg. & Wvg. Mills Ltd. vs .

CIT : [1993]200ITR544(Delhi) . In that case, the assessed paid to Modi Industries Ltd. certain share of expenditure for the maintenance of a guest house at Delhi. The said expenditure of Rs. 14,916 was disallowed on the ground that registers were not maintained by the assessed but were maintained by the Modi Industries Ltd. The High Court held that the said fact by itself would not be sufficient to disallow the said deduction.

5. The arguments of the Departmental Representative were to the following effect : There is no doubt that the advertisement had been done by Bombay Dyeing Mills. Debit note was for an arbitrary figure. Why is it at 0.4% The agreement kept the form of letter dt. 11th June, 1987 was only between the Bombay Dyeing Mills and the main distributor LCMC. There is no agreement between LCMC and assessed before us. What was paid by the assessed was only ex gratia payment by the assessed to the sole agent. The recouping plea is not carried to its logical ends. No part of the advertisement expenditure is recouped from the retailer. It is not genuine to the extent of genuine business expenditure. The expenditure is not related to the business of the assessee. In the asst. yr. 1989-90 the facts are different. In that assessment year, the assessed filed before the CIT(A) a letter from the Bombay Dyeing Mills. The CIT(A) gave a finding that according to the said letter there existed an arrangement between Bombay Dyeing Mills and LCMC as per which the sole agent (LCMC) was entitled to get back the advertisement expenses @ 0.04% of the total purchases made by the sub-agent (the assessee). For the assessment year under consideration, the assessed has not produced before the lower authorities or even the Tribunal any such letter from the Bombay Dyeing Mills. Thus, the order of the CIT(A) dt. 18th November, 1991 for the asst. yr. 1989-90 cannot be of any assistance to the assessee. The case relied on by the assessed namely, Modi Spg. & Wvg. Mills Co. Ltd. (supra) is distinguishable. In that case, the High Court was not concerned whether the maintenance of the guest house was relatable to the assessor's business or not. In the present assessor's case the advertisement expenditure is not relatable to the business of the assessee.

6. In reply, the assessor's counsel submitted as under : In the assessment year under consideration LCMC spent Rs. 2,51,402 as advertisement expenses.

Deducting the amount recouped from the sub-agent of Rs. 2,18,336, it claimed for deduction only Rs. 33,066. This can be seen from the pages 3 to 7 of book No. 2 and copy of the assessment order filed before the Tribunal. In the case of LCMC the taxable income was computed at Rs. 2,28,258 in the asst. yr. 1988-89 whereas in the assessor's case the taxable income was determined at Rs. 3,10,104 including the impugned disallowance of Rs. 25,438. Where is the benefit to the assessed assessed got the goods from LCMC at the cost price. So the advertisement expenditure was shared. As the assessed was dealing in Bombay Dyeing goods only, evidently the advertisement expenditure related to the assessor's business.

7. We have considered the rival submissions, case law before and perused the papers filed before us. The Assessing Officer is not correct in stating that the expenditure on advertisement was remotely connected with the assessor's business. The advertisement related to goods produced by Bombay Dyeing Mills with which the assessed is dealing as a sub-agent. Hence, this argument of the Assessing Officer is fallacious and cannot be accepted. Further, the Assessing Officer is not correct in stating that the expenditure cannot be said as genuine expenditure since the advertisement was not done in the name of the assessed and the claim was made on the basis of a debit note dt. 31st March, 1988. Whether the advertisement is made in the name of the assessed is not relevant. It should be seen whether the advertisement related to the goods with which the assessed deals in or not Simply because the debit note was dt. 31st March, 1988, it cannot be doubted as not genuine. Its genuineness is all the more proved because LCMC has taken credit for the same in their advertisement expenditure account. LCMC claimed only the net debit in their advertisement account of Rs. 33,066. If the Department disallows the amount of Rs. 25,438 in the hands of the present assessed it ought to have allowed Rs. 33,066 + Rs. 25,438 in the hands of LCMC since there was an agreement to share the expenditure on advertisement between LCMC and Bombay Dyeing. From the copy of advertisement account in the books of LCMC it will be seen that LCMC recouped advertisement expenditure not only from the assessed before us, but also from M/s LCMC & Co. (sub-agent for goods taxable under the sales-tax). Except stating that LCMC was a close concern of the assessee, no collusion has been established by the Assessing

Officer between the present assessed and LCMC. The CIT(A) concluded that the expenditure was not dictated by consideration of business expediency. It is not open to the Department to prescribe what expenditure an assessed should incur and in what circumstances he should incur. Every businessman knows his interest best [CIT vs . Dhanrajgirji Raja Narasingirji : [1973]91ITR544(SC) ] As laid down by the Supreme Court in the case of CIT vs . Walchand & Co. : [1967]65ITR381(SC) in applying the test of commercial expediency whether the expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the expenditure has to be judged from the point of view of the businessman and not of the Revenue. An expenditure made by a business man by way of commercial expediency must be an expenditure which has been incurred in the expectation that such payment should directly or indirectly benefit the business of the assessed or facilitate the carrying on the assessor's business. A man's business may be beneficial in a number of ways. One of them may be the promoting of good business relations with those whom he has to deal with during the course of the business [CIT vs. A. Tellery & Sons (P) Ltd. (1972) Tax LR 581 (All)]. The CIT(A) comparing the rate of commission in the earlier assessment years termed it as arbitrary. But he has not taken into consideration the agreement between LCMC and Bombay Dyeing Mills to see at what rate LCMC agreed to bear the expenditure of advertisement with Bombay Dyeing Mills in the earlier years. The CIT(A) ought to have seen the rate at which LCMC agreed to share expenditure with Bombay Dyeing Mills in the earlier years. In these facts and circumstances of the case, we hold that the lower authorities are not at all justified in disallowing the assessor's claim for deduction of Rs. 25,438.

8. In the result, the appeal is allowed.