

Jhalani and Co. Vs. Assistant Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Apr-17-2000

Reported in : (2001)77ITD44(Delhi)

Judge : P Singh, R Singh

Appellant : Jhalani and Co.

Respondent : Assistant Commissioner of

Judgement :

1. This is an appeal filed by the assessee against the order passed by the CIT(A) on 31-3-1993 relevant to assessment year 1990-91. The grievance of assessee is as under : (1) That the learned CIT(Appeals) has erred in sustaining the non-allowance of a sum of Rs. 68,118 written off under the head "Establishment expenditure" in respect of Shri L.N. Datta. The amount is clearly allowable as a business expenditure/business loss in accordance with provisions of Income-tax Act.

(2) That the learned CIT(Appeals) has erred in fact and law in sustaining disallowance of Rs. 3,000 out of Telephone expenses and of Rs. 2,500 out of travelling and conveyance expenses. The disallowance has been made and sustained on ad hoc arbitrary basis and is liable to be deleted.

(3) That consequential relief is allowable in respect of interest charged under sections 234B and 234C of the Income-tax Act.

(4) That the order of the learned CIT(Appeals) and the assessment as made are against law and facts of the case involved.

2. First ground relates to the addition of Rs. 68,118. The Assessing Officer while framing assessment under section 143(3), noticed that establishment expenditure included a sum of Rs. 68,118 related to L.N.Datta. It was observed by the Assessing Officer that in the past this amount was shown as advance to him. But in the year under consideration, it was written off and claimed as payment of gratuity to him. The Assessing Officer called upon the assessee to furnish details in this regard. It was explained that Rs. 90,000 was payable as gratuity to Shri Datta. But it was finally settled in the year under consideration at Rs. 68,118 and hence the amount standing to his debit account was claimed as deduction in the Profit and Loss Account. The Assessing Officer disallowed the said sum. The CIT(A) did not accept the contention of the assessee on the ground that there was no evidence, confirming the payment of gratuity.

3. Before us, the Id. counsel for the assessee contended that Shri Datta was working with assessee since long time and he ceased to work in the calendar year 1985. He drew our attention to the account of Shri Datta in the books of the assessee from 1-6-1980 onwards up to 31-3-1990, where from it was obvious that the said employee used to draw the excess amounts from the assessee against remuneration due to him and from year to year his debit balance kept on increasing. Whereas on 30-6-1981, the debit balance was at Rs. 17,494.59 and ultimately on 30-6-1985 that is the year of his cessation of service, it was Rs. 68,118.59. After that there was no transaction in the account of the said person except in the assessment year under consideration where the amount standing in the account was adjusted against the claim of gratuity. It was contended by the Id. counsel that the assessee adjusted the same in full and final against the gratuity due to him at Rs. 90,000. In the alternative, it was argued by the Id. counsel that the sum may be treated as bad debts or business loss for the reason that the assessee could not recover the sum in question which was advanced to the said employee during the course of business. In support of his claim for the said amount as bad debt or business loss, the Id.counsel placed reliance on the judgment of Gujarat High Court in the case of CIT v. Abdul Razak & Co. [1982]

136 ITR 825 and CIT v. Jwala Pd Radha Kishan [1977] 107 ITR 540 (All.).

3.1 On the other hand, the Id. D.R. supported the order passed by the Assessing Officer on the ground that no evidence for payment of gratuity was furnished during the course of assessment proceedings or before the CIT(A). It was contended by the Id. D.R. that the said Shri Datta retired in 1985 and there was no question of granting any gratuity after a gap of about 5 years. It was further stated that even if the claim of the assessee as regards gratuity to the tune of Rs. 90,000 was accepted, there was no evidence of having paid the difference between Rs. 90,000 and Rs. 68,118. It was finally concluded by the Id. D.R. that no gratuity at all was paid and the amount in question advanced to Shri Datta during the course of his employment was written off and adjusted against the so-called "gratuity", which could not be claimed as deduction either as expense or bad debt or business loss.

4. We have considered the rival submissions in the light of material placed before us. It is obvious that Shri L.N. Datta, was employed with the assessee and during his employment he obtained certain sums of money on year to year basis and after setting off against the remuneration due to him, the total amount advanced to him came to Rs. 68,118.89 as on 30-6-1985 and he retired in the calendar year 1985.

After that there was no transaction in his account and finally the assessee wrote off the said sum as on 31-3-1990 by way of adjustment against the claim of gratuity in full and final settlement.

5-6. So far as the claim of the assessee that the amount in question represented gratuity, we are of the view that the same cannot be accepted in view of the fact that there is no evidence for the payment of gratuity to the said Shri Datta and the amount in question represents unilateral write off against the so called 'gratuity'. In order to claim deduction for an expenditure, there must be a claim for the expenses and the assessee must have either paid the expenditure or admitted the liability to pay it, depending upon the method of accounting followed by it. But in the instant case neither any claim was made by Shri Datta for gratuity nor any such amount was paid or liability to pay was accepted by the assessee. Under

these circumstances, we are not inclined to accept the claim of the assessee for deduction on account of gratuity.

7. Now, we shall look at the decisions relied upon by the Id. counsel, in support of his claim for bad debts. In the first decision of Abdul Razak & Co. (supra), the appellant carried on business as commission agents as well as dealer in grocery articles. It made a claim for bad debt of Rs. 78,284 in respect of amount due from M/s. Md. Pir Mohammed of Nasik, which was disallowed by the Assessing Officer on the ground that the said debt was neither incurred in the course of money-lending nor in the course of commission agency. It was the case of the appellant that it had trading relations with the Nasik firm for more than 30 years and these advances were asked for and made having regard to the commercial relations. The Andhra Pradesh High Court accepted the claim of the assessee in view of the fact that the debt owed by the Nasik firm was on[^] which sprang directly from the business of the assessee and hence was allowable as bad debt. In the second case of Jwala Pd. Radha Kishan (supra), the assessee was a sole selling agent of Bhopal Inds. The assessee had lent Rs. 5 lakhs to one Shri Jwala Prasad Radhakishan. The amount together with interest thereon was outstanding for a number of years. In the relevant assessment year, the assessee in full and final settlement received from Jwala Prasad certain shares of a company and the balance was claimed as bad debt. It was held that the advancing of the loan was intimately connected with the assessee's business and therefore the loss incurred in this connection was held to be business loss. From the facts of these two cases, it is clear that these cases are distinguishable from the facts of the instant case. Whereas in these cases, the advancement of loans was intimately connected with the assessee's business and the assessee made these advances in the course of commercial relations which ultimately turned out to be not recoverable and hence the claim of the appellants were accepted by the High Courts. On the other hand in the instant case, no amount was advanced to Shri Datta for commercial purposes. He withdrew money in excess of his dues and finally did not pay it back. Hence the reliance of the Id. counsel on these judgments for treating the same as bad debt is misplaced. Even otherwise it is admitted position that any amount in order to be claimed as bad debt must have been taken into account in computing the income of the assessee in the previous year in which such debt is being

written off or in an earlier previous year. From the facts of the case recorded above, it is obvious that these do not satisfy the conditions precedent for claiming any amount as bad debts.

8. Now, we shall analyse the assessee's claim of the said sum becoming business loss. We are reminded of the classic judgment of the Supreme Court in the case of *Badridas is Daga v. CIT* [1958] 34 ITR 10, wherein certain principles for claiming the loss as business loss were settled.

It was held that the loss for which a deduction is claimed must be one that springs directly from the carrying on of the business and is incidental to it and not any loss sustained by the assessee even if it has some connection with his business. The Hon'ble Supreme Court in this case was dealing with the claim for embezzlement of funds by the employee of the assessee and it was ultimately held that the loss sustained by the appellant as a result of misappropriation by the agent was one which was incidental to the carrying on the business and hence the deduction was allowed. While delivering this judgment, it was observed by the Hon'ble Supreme Court as under : "A business especially such is calculated to yield taxable profits has to be carried on through agents, cashiers, clerks and peons.

Salary and remuneration paid to them are admissible under section 10(2)(xv) as expenses incurred for the purpose of the business. If employment of agents is incidental to the carrying on of business, it must logically follow that losses which are incidental to such employment are also incidental to the carrying on of the business.

Human nature being what it is, it is impossible to rule out the possibility of an employee taking advantage of his position as such employee and misappropriating the funds of his employer, and the loss arising from such misappropriation must be held to arise out of the carrying on of business and to be incidental to it. And that is how it would be dealt with according to ordinary commercial principles of trading.

At the same time, it should be emphasised that the loss for which a deduction could be made under section 10(1) must be one that springs directly from the carrying on of the business and is incidental to it and not any loss sustained by the

assessee, even if it has some connection with his business. If, for example, a thief were to break overnight into the premises of a money-lender and run away with funds secured therein, that must result in the depletion of the resources available to him for lending and the loss must, in that sense, be a business loss, but it is not one incurred in the running of the business, but is one to which all owners of properties are exposed whether they do business or not. The loss in such a case may be said to fall on the assessee not as a person carrying on business but as owner of funds. This distinction, though fine, is very material as on it will depend whether deduction could be made under section 10(1) or not.' 9. The Hon'ble Supreme Court in the aforecited judgment was dealing with the allowability of the loss on account of embezzlement. When the principles set out in this judgment are applied to the instant case, it becomes obvious that the amount in question was advanced to Shri Datta during the course of business and was incidental to it. Later on Shri Datta retired from the firm without returning the amount which was received by him during the course of his service resulting in loss to the assessee. Under these circumstances, we are of the view that the non-returning of advance given to Shri Datta can be readily characterised as business loss. We, therefore, reverse the order of CIT(A) on this ground.

[10. to 13.] These paras are not reproduced here they involve minor issues.

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