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Court : Delhi

Decided On : Aug-01-2001

Reported in : [2001]119TAXMAN571(Delhi)

Appeal No. : IT Reference Nos. 66 to 68 of 1979 1 August 2001

Appellant : Kwality Restaurant

Respondent : Cit

Advocate for Pet/Ap. : R.D. Jolly, for the assesse

Judgement :

These three reference applications relate to the same assessed Kwality Restaurant and Ice Cream for the assessment years 1964-65, 1966-67 and 1967-68. Pursuant to the direction given by this court under section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act), the following questions have been referred for opinion of this court.

'1. Whether, on the facts and circumstances of the case and on a true construction of the agreement dated 30-4-1962, the Tribunal was right in law in disallowing the claim of the assessed for the expenditure of Rs. 12,800 incurred in respect of the business of Maharaja Restaurant in West Germany as a business loss

2. Whether, on the facts and circumstances of the case and on a true construction of the agreement dated 30-4-1962, the Tribunal was right in law in disallowing the

claim of the assessed for the expenditure of Rs. 16,766 incurred in the course of the business of the assessed?

3. Whether, on the facts and circumstances of the case and on a true construction of the agreement dated 30-4-1962, the Tribunal was right in law in disallowing the assessed's claim for the loss of Rs. 1,99,904 suffered by it in connection with the business of Maharaja Restaurant as a revenue loss?'

2. Factual position as indicated in the statement of case is that the assessed had incurred various expenditures on behalf of one Maharaja Restaurant from the date of inception of that restaurant which were claimed as business loss. The assessing officer found that there was no business relation with Maharaja Restaurant and, thereforee, the claim of expenditure was held to be untenable. The assessed carried the matter in appeal before the Appellant Assistant Commissioner who was of the view that there was business link because some of the partners were shareholders of the company which controlled Maharaja Restaurant. The revenue took the matter in appeal before the Tribunal.

3. The revenue's challenge was accepted by the Tribunal with the following views :

'An argument raised for the assessed in the above matter was that the assessed's business was to run a number of restaurants in India as well as outside India and hence running a restaurant in Germany either to get profits directly or get other income by way of dividend or interest was part of assessed's business of conducting restaurants and hence the loss claimed was a business loss. It was emphasised that the assessed could have demanded (in return for finance and other assistance including advice on hotel management it provided) that the German company should pay out fees or share the profits from the Maharaja Restaurant and in that case the income or loss from Maharaja Restaurant that came to the assessed would have been dealt with under the head 'Business'. We do not find these submissions valid, if it is the assessed's case that its business is to run restaurants in India and abroad (in collaboration) it must show that it conducted such a business in the relevant period. We have already stated that so far as Maharaja Restaurant was concerned it was not run by the assessed but by a limited company with which the assessed's only connection could be as a

shareholder through its partners or as a creditor. The argument that the assessed could well have stipulated for technical fees or a share in the profits of Maharaja Restaurant in return for its services raises a hypothetical issue. On the facts on record in this case we do not find such an issue relevant. We decline to interfere.'

4. Prayer for a reference was made under section 256(1), which was turned down. However, on being moved under section 256(2), questions set out above were directed to be referred. Pursuant to the direction, the Tribunal has referred the questions along with the statement of the case.

5. According to the learned counsel for the revenue, the Tribunal has categorically held that there was no business link and that any hypothetical issue cannot be pressed. There is no scope for entertaining the present application. There is no appearance on behalf of the assessed despite notice.

6. As has been rightly submitted by the learned counsel for the revenue, Maharaja Restaurant was not run by the assessed but by a limited company and the only remote connection of the assessed even if it is held to be so was that some partners were shareholders of the company. That per se did not make the claim relating to Maharaja Restaurant a liability of the assessed. The main issue having been answered in favor of the revenue, the related issues have to be identically disposed of.

7. As the conclusions are essentially factual, we decline to answer the questions.

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