

Acit Vs. Dabur India Ltd.

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jul-24-2003

Judge : P Parashar, B Jain

Appellant : Acit

Respondent : Dabur India Ltd.

Judgement :

1. This appeal has been filed by the Department against the order of learned CIT(A) dated 21-5-1997 for A.Y. 1994-95 2. Shri Salil Gupta, Sr. D.R. appeared on behalf of the Department whereas Shri R. Ganesan, C.A. represented the assessee.

3 Ground No. 1 & 2: These grounds are directed against deletion of addition of Rs. 4,25,205/- relating to travelling expenses incurred on wives of directors.

4. During the course of assessment proceedings, the AO found that in many trips the wives of Directors had accompanied them. The assessee had claimed the expenditure incurred on wives of directors as business expenditure. The AO required the assessee to furnish the details of director travelling with their wives. It was submitted that the directors undertook trips for business purposes, including meeting of the suppliers/dealers; meeting of various collaborators, bankers etc.

and during such foreign trips the wives of directors had accompanied their husbands at the instance of the company for maintaining better relationship with

business personalities, suppliers and dealers which was essential for the protection of business interest. It was further submitted that said meetings were held at social gathering and meeting in which spouses of the directors also take part. It was further submitted that expenses incurred on the trips of wives of directors were wholly and exclusively for the purpose of the business of the assessee company. In this reliance was placed on the orders of Tribunal in the cases of ITO Vs. A.F. Fargusan & Co. (1986) 19 ITD 620 (Bom); and Ved Prakash Agarwal Vs. IAC (1986) 26 TTJ 550 (Chd.). On the basis of these submissions it was claimed that expenditure on the wives' traveling totalling to Rs. 8,50,210/- should be allowed while computing the income of the assessee.

5. The AO did not accept the explanation of the claim of the assessee.

According to him the view of directors had no locus standie in the business affairs of assessee company. He also rejected the plea that the Board had passed resolution for permitting the views to go with their husbands who were directors in the company. This plea was rejected on the ground that resolution passed by the director was self serving and the same could not alter the situation and voluntarily give certain tax benefit to its director and gain advantage itself under the guise of its indoor management. In support of this view reliance was placed on the ratio of decisions in the case of Modi Industries Ltd. Vs. CIT 110 ITR 855 (All.); and Bombay Mineral Supply Co. (P) Ltd. Vs.

CIT 153 ITR 437 (Guj). However, the AO on estimate basis allowed 50% of the expenses and held that the 50% of the expenses on the traveling of wives amounting to Rs. 4,25,205/- was not at all incurred wholly and exclusively for the purpose of business of the assessee company.

6. In appeal the assessee advanced similar pleas before the learned CIT(A). It was submitted that the meetings in which wives participated served the business interest of the assessee company as the visits of the wives helped the assessee in promoting its business. The learned CIT(A) found force in the submissions of the assessee and deleted the addition by observing as under : "11. I have carefully considered the facts of the case and find substance in the submissions made on behalf of the appellant. It is a matter of common knowledge that in the present days

most of the business is discussed in the social get-to-gather in which the ladies also take part. In many cases the ladies serve as spokes-persons on behalf of the business organization. The AO has referred to certain judgments which are not directly related to the issue. In the case reported in 153 ITR 437, the wife had accompanied the husband to look after his health and not to do any work on behalf of the company. As against this, the judgment of Madhya Pradesh High Court (220 ITR 552) and certain decisions of the Appellate Tribunals, including that of the jurisdictional ITAT of Delhi in the case of J.K. Synthetics are directly related to the issue under consideration. Following these I hold that the expenditure on the wives of the directors is connected with the business of the appellant company. Accordingly, the AO is directed to allow the claim of the appellant. The appellant gets relief of Rs. 4,25,205/- 7. Before us, the learned Sr. D.R. submitted that the learned CIT(A) was not justified in deleting the addition because no evidence was filed by the assessee to prove that the wives actually participated in the meetings in which business deals were settled. I was pointed out by the learned Sr. D.R. that the resolution of the Board which was general in nature cannot justify the expenditure and the assessee cannot derive any advantage out of it. In support of his contention, the learned Sr.

D.R. placed reliance on the ratio of decisions reported in 153 ITR 412; 153 ITR 437 (Guj.); and 235 ITR 106 (Raj).

8. On the other hand, learned counsel for the assessee Shri R. Ganesan Supported the order of learned CIT(A) and submitted that in the nature of the business done by the assessee company it was necessary for the assessee to promote the interest of the business by participating in the meetings and in such meetings the wives of directors were allowed to participate by accompanying their husbands in order to maintain social and business relationship. The learned counsel also pointed out that in A.Y. 1989-90 to 1992-93 the expenditure incurred on the foreign trips of wives of directors were allowed. In A.Y. 1996-97 also not disallowance was made on the expenditure relating to their foreign trips in which they accompanied their husbands/directors in the assessee company. According to him in A.Y. 1994-95 50% of the expenditure was disallowed.

9. According to the learned counsel for the assessee, the AO was not justified in holding that the visit of wives did not serve any business purpose of the assessee company. In support of his contention, the learned counsel placed reliance on the ratio of decisions in the following cases: 10. We have carefully considered the facts and circumstances relating to this matter and the rival submissions. The assessee has filed the extract of resolution passed by the Board of Directors in the meeting held on 20-6-1988. A copy of this extract finds place at page 4 of the paper book which reads as under : "RESOLVED THAT the consent of the Board be and is hereby given for travelling of the wife of concerned whole time/Managing Director of the purpose of Business of the Company within India and abroad and expenses incurred thereon." 11. It may be pointed out that it is the only document which has been relied upon by the assessee in support of its claim. The resolution is very vague, general and non-specific. After 20-6-1988 the assessee could not show any further resolution to approve or authorize the visit of wives of the directors. In view of this resolution the Board had given consent for travelling of the wife of concerned whole time Managing Director for the purpose of business of the company within India and abroad. There is no specific resolution about the wives of the Managing Director or other directors for the year under consideration. In the case of M.N. Kanagasabai Chettiar Vs. CIT (1970) 75 ITR 672 (Mad.) the assessee company by a resolution of the Board of Directors resolved to debit the accounts of the directors for the excess interest of 6% for their credits in the company. In the year 1958-59 this resolution was implemented and a sum of Rs. 16,746/- was deducted by the company from the interest of Rs. 19,219/- to which it was entitled. The claim of deduction was rejected by the departmental authorities and also by the Tribunal on the ground that there was no commercial expediency in support of the claim. The Hon'ble Madras High Court upheld the view taken by the Tribunal. Regarding the resolution it was observed that by a self serving resolution of the Boards of Directors the assessee could not gain advantage to itself under the guise and in the exercise of the indoor management of the company. In our view, therefore, the assessee cannot derive any benefit only on the basis of such resolution which is not specific in terms, particularly and more particularly in absence of any other supporting evidence to justify the claim. It may also be pointed out that the AO had asked the assessee through the questionnaire

to specify the purpose for which the wives accompanied the directors but despite this direction neither the details of the visits were furnished nor the other evidence was adduced to support the claim.

12. Since the expenditure was claimed by the assessee, the burden was upon it, firstly to give the details of expenditure including the details of trips made by the wives of directors and also the details of meetings attended by them. The assessee has miserably failed in this regard. There is no letter of invitation on record to show the details of visit of the wives along with their husband/directors. There is no business VISA in the names of wives. In absence of any detail relating to the date and place and other details of meetings, the business purpose of the assessee to justify the trips of the wives cannot be established. In other assessment years the details may or may not be there but were are concerned with the assessment year under consideration and in our view the claim of the assessee cannot be accepted in absence of any evidence filed by the assessee in respect of the same. Neither the company nor the directors nor the wives have furnished any detail of any business meeting in which the wives of the directors of the assessee company participated.

13. The learned CIT(A) has simply gone on general explanation of the assessee. He has not considered the specific case of any of the wives nor has examined the details of their visit. He has also made general observation that it is a matter of common knowledge that in present days most of the business is discussed in social get-to-gather in which ladies also take part. Such a general observation cannot take the shape of any legal presumption and facts of each case have to be considered by examining the details for allowing any business expenditure. The far fetched or general plea cannot take the place of proof.

14. The learned CIT(A) has placed reliance on certain decisions but the same are found to be distinguishable. In the case of CIT Vs. Steel Ingots Pvt. Ltd. (1996) 220 ITR 552 (MP), the assessee company had claimed foreign tour expenses of some of its directors and their wives.

The Board of Directors had allowed the incurring of medical and travelling expenses of financial director and his wife. Since the financial director was having

a heart ailment, such expenditure was held to be allowed on account of commercial expediency. In that case it was also held that it was not the case of Department that the Expenditure was excessive or unreasonable. It was, therefore, held that it could not be said that the expenditure was not connected with the business of the assessee.

15. In the case of CIT Vs. Appollo Tyres Ltd. 237 ITR 796 (Ker.), on which reliance has been placed by the learned counsel for the assessee, the wife of the chairman-cum-managing director accompanied him by virtue of Board's approval of her trip. Since there was specific approval by the Board of Directors, the disallowance of expenditure was not found to be justified. In the present case, it may be pointed out that no specific resolution was passed by the Board.

16. In the case of Hero Cycles Ltd. Vs. ACIT (1998) 100 Taxman-Magazine (Case digest/ITAT) 251 also the facts were distinguishable. In that case medical expenses were borne by the company in the interest of business.

17. In the case of CIT Vs. Sundaram Clayton Ltd. 240 ITR 271 (Mad.), it was held by the Hon'ble Madras High Court that the assessee could not claim the expenses, if any, incurred on the travelling of spouse of its director on his or her business travel abroad, unless the spouse contributes to the business of the assessee. Although it was observed that realities of commercial world are to be considered. However, as observed by the Hon'ble Madras High Court also the contribution of the wife or spouse has to be shown. In the present case the assessee has not adduced any evidence to show that any contribution was made by the wives.

18. Thus, the claim of the assessee cannot be justified on the basis of general ground and if too much liberal view is taken then no disallowance can be made in any case even if the visit of the wife of the partner or director is purely for personal purposes or to just give company to the husband. In the recent case of D.B. Madan Vs. CIT (2003) 261 ITR 193 (Mad.), the Hon'ble Madras High Court has observed as under : "If the object of the foreign tour by the assessee's wife was to attend on the assessee and for his personal comfort, the expenditure would not qualify for deduction through the result of such expenditure may increase the efficiency of the assessee in attending to his business. However, where the object

of the foreign tour undertaken by the assessee's wife was for the purpose of the business of the assessee and incidentally she attended on her husband who was in bad health, then the expenditure would be allowable as business expenditure. Similarly, if the object of the expenditure is two fold, Viz., for the purpose of the business and to attend to the personal comforts of her husband, then the expenditure would not qualify for allowance as the object of the expenditure would be dual in nature and the expenditure would not have been incurred wholly and exclusively for the purpose of the business." 19. In the reference was also made to the earlier decision of Madras High Court in the case of CIT Vs. Sundaram Clayton Ltd. (supra) as also the decision of Kerala High Court in the case of CIT Vs. Appolloo Tyres Ltd. (supra) and other cases. In the present case also, it is not provided by the assessee that any business purpose was swerved by the participation of the ladies as held in the case of CIT Vs. T.S. Hajee Moosa & Co. (1985) 153 ITR 422 (Mad.) Section 37(1) does not permit any allowance from the point of view of any indirect advantage that may be secured as a result of the expenditure.

20. The learned counsel for the assessee has placed reliance on the earlier and subsequent assessment orders and on that basis he has pleaded that since no disallowance was made in earlier year and subsequent year, in this year also disallowance should not have been made. Before us the technical details of earlier and subsequent years are not available. Hence, we cannot in any case, every year is a separate year and we have to confine to the present case only.

Otherwise also the issue has to be decided on its merits and not by following the assessment orders of earlier years. It may further be pointed out that even if the expenses incurred on the visit of directors are allowed, merely on that basis the expenditure on the visit of their wives cannot be allowed because the claim and nexus between the expenses incurred on the wives on their foreign trips with their husband directors has to be separately and independently considered. Therefore, the expenditure can qualify for deduction u/s 37(1) only if the expenditure was incurred wholly and exclusively for the purpose of the business.

21. In view of the above, we find sufficient force in the arguments advanced on behalf of the Department that the claim of the assessee was not allowable. Thus, we reverse the findings of the learned CIT(A) on the issue in question and restore that of the AO.22. Ground No. 3: This ground is directed against the deletion of addition of Rs. 3,25,000/- on account of receipt from M/s Janak Medicos & Departmental store. during the course of search the exercise book was recovered and on page 24 of the said book there was entry regarding the cash receipt of Rs. 3,25,000/-. The AO after examining the entire material held that those related to the receipt of money on account of over invoicing of purchase and receipt of kickbacks in cash. He, therefore, made an addition of Rs. 3,25,000/-.

23. The learned CIT(A) considered the matter in detail and also examined the books of account of the assessee as well as that of M/s.

Janak Medicos. He found that there were regular transactions after 1-9-1992. These transactions have been noted by the CIT(A) on page 16 of his order and in para 13.1 he has explained the position in relation to short supply of goods amounting to Rs. 8,65,000/- goods returned at Rs. 1,24,000/- and amount debited for quality of goods at Rs. 1,70,000/- . According to him these amounts had been duly adjusted by the entry of Rs. 3,25,000/- made on 31-3-1994. He deleted the addition by observing as under : "13.1. A perusal of the entries re-produced above would show that the appellant had made two regular purchases on 1.10.92 and 31.3.94 for Rs. 1,42,830 and Rs. 3,36,000/- respectively. The payment for the first bill was made on the same date. Thereafter two amount of Rs. 50,000/- each were received through cheque. Out of these two cheque of Rs. 50000/- each, one was dishonored and debited to the party's account. The other debit entries reflect the short supply of goods amounting to Rs. 8,65,000/- goods returned Rs. 1,24,000/- and amount debited for quality of goods Rs. 1,70,000/-. The total of these entire amount to Rs. 11,59,000/-. The credit entire include rate escalation amount of Rs. 1,86,309/-. 10 and the cash receipt of Rs. 3,25,000/-. There is not even a single entry which could be called as accommodation entry for explaining the amount of Rs. 3,25,000/-. Even otherwise the amount of Rs. 3,25,000/- has duly been accounted for in the books of account. The AO admits this fact.

His only doubt is that the entry of Rs. 3,25,000/- is an after thought. Even if it is an after thought, the amount has been accounted for and does not reflect any over invoicing or undisclosed receipt of Rs. 3,25,000/-. The appellant has been furnishing the same explanation right from the date of search. The AO has not been able to establish that there was a receipt of Rs. 3,25,000/- which was not accounted for. The addition is merely based on doubts and conjectures. Accordingly, the same is deleted." 24. The learned D.R. vehemently argued that the accounts of the assessee company are regularly audited and if the case was received on account of transaction as shown by the assessee then it should have been adjusted by making proper entry in the books of account and not by putting the amounts under the staff suspense account. The learned D.R. placed reliance on the order of AO. 25. On the other hand, the learned counsel for the assessee Shri Ganesan supported the view taken by the learned CIT(A). He also made reference to various papers of the paper book and in particular to the explanation of the assessee contained in letter dated 19-8-1994 which is placed at pages 41 & 42 of the paper book. He also made reference to the other letter dated 13-6-1994.

26. We have carefully considered the facts and circumstances relating to this matter and the rival submissions and have also taken into consideration the entire material on record. The letter relating to M/s. Janak Medicos contained various details of purchases. However, on top of this letter caption "over billing" is mentioned and in the last "cash given Rs. 3,25,000" is also mentioned. The assessee has not been able to explain as to why on this letter over billing is written.

Secondly, the explanation that was placed before the learned CIT(A) was not put before the AO. It may also be pointed out that the assessee could not show as to whether the goods relating to cash payments were taken in the purchase register or the stock. Vide letter dated 13-6-1994 the assessee had admitted that the case of Rs. 3,25,000/- was received at Jain Mandir Road Office from M/s. Janak Medicos & Departmental Stores, New Delhi and in the last it is mentioned that the amount of Rs. 3,63,690/- includes the amount of Rs. 3,25,000/- regarding which debit note was issued by the assessee. The debit note of the assessee and the credit note of the party, namely, Janak Medicos, have not been properly

examined. In this regard again it, may be mentioned that the assessee had put the amount in staff suspense account for which cogent explanation has not been given and to he learned CIT(A) has also not considered this aspect of the matter.

27. In view of the above, we are unable to agree with the finding recorded by the learned CIT(A). Since the matter has not been adjudicated after thorough examination of the relevant entries in the books of account, we consider it proper to set aside the order of learned CIT(A) and to restore the matter to the file of AO to examine this issue in the light of our observations as made above and after providing due opportunity of being heard to the assessee. We order accordingly. This ground it, therefore, allowed for statistical purpose.

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