

**Cit Vs. Udaipur Mineral Development Syndicate (P) Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/770301](http://sooperkanoon.com/770301)

**Court :** Rajasthan

**Decided On :** Jul-08-2003

**Reported in :** [2003]132TAXMAN139(Raj)

**Appeal No. :** D.B.I.T. Reference No. 6 of 1994 8 July 2003

**Appellant :** Cit

**Respondent :** Udaipur Mineral Development Syndicate (P) Ltd.

**Advocate for Def. :** Mr. Jain

**Advocate for Pet/Ap. :** Anuroop Singhi and J.K. Singhi, *for the Revenue* T.C. Jain, Raj Kumar Yadav and N.M. Ranka, *for the Assessee*

**Judgement :**

ORDER

On an application under section 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following questions for the opinion of this court :

'1. Whether on the facts and in the circumstances of this case, the Tribunal was justified in allowing the claim of assessee of Rs. 54,607 in respect of depreciation, power charges, engine-hire, despite the fact that business remained closed during the relevant accounting year ?

2. Whether on the facts and in the circumstances of this case, the Tribunal was justified in deleting the disallowance of claim of expenditure of Rs. 1,51,190 incurred on medical treatment of Shri RK Golecha, M.D. in USA, despite the fact that the expenditure was in the nature 'Personal expenditure' of Shri Golecha ?'.

2. The assessee-company is engaged in the business of mining of gypsum. The relevant assessment year is 1984-85. During the course of assessment, the assessing officer, noticed that assessee has claimed depreciation, power charges and engine-hire charges and also claimed expenditure of Rs. 1,51,190 reimbursed to the Managing Director Shri R.K. Golecha, the amount which was incurred on medical treatment in U.S.A. The assessing officer has rejected the claim of the assessee regarding depreciation, power charges and engine-hire charges as during the relevant year, the business of the assessee remained closed in this relevant year.

3. In appeal before the Commissioner (Appeals), Commissioner (Appeals) has allowed the power charges and engine hire charges but disallowed the amount of depreciation. Similarly, the Commissioner (Appeals) has disallowed the expenditure of Rs. 1,51,190 which was reimbursed of Shri R.K. Golecha.

4. In appeal before the Tribunal, the Tribunal has allowed the depreciation amount as well as allowed the amount of Rs. 1,51,190 paid to Mr. R.K. Golecha, Managing Director of the company.

5. Heard learned counsel for the parties. They have also submitted their written submissions.

6. The facts are not in dispute that assessee has claimed depreciation to the tune of Rs. 14,259 power charges to the tune of Rs. 10,348 and engine hire charges to the tune of Rs. 30,000. There is no dispute on the facts also that in the preceding year, i.e., assessment year 1983-84, power charges and engine-hire charges are allowed but depreciation was not allowed. The Tribunal in the year in hand has allowed the depreciation holding that when machinery is ready for production, the assessee is entitled for depreciation. Tribunal has also allowed the deduction of medical expenditure of Rs. 1,51,190.

7. Considering the submissions, when the similar expenditure on power charges and engine-hire charges are allowed by the Commissioner (Appeals) in the preceding year and that has become final, no interference is called for to that extent.

8. However, depreciation is permissible only in cases where the machinery has been actually used for production. When the machinery in question are not put to use in the year under consideration even for a day and business remained closed, there is no justification to allow the depreciation on such machinery which has not been used even for a day in the whole year. The Tribunal has committed error in allowing the depreciation on a machinery which has not been used even for a day in the previous relevant year in question.

9. The next issue involved in the question referred is whether assessee entitled for deduction of Rs. 1,51,190 which has been incurred on treatment of Mr. R.K. Golecha. This total amount has been incurred not only for payment to the hospital for treatment but that includes to and fro air tickets of Mr. R.K. Golecha and his wife from India to U.S.A.

10. The assessee claimed that as the Board of directors have passed the resolution for payment of this amount to the Managing Director, therefore, this expenditure is for the purpose of business.

11. Normally what is the commercial expediency in the business, a businessman should decide, but when it is apparent on record that the expenditure is not for the purpose of business, the assessing officer has power to examine and disallow the expenses which is not for the purpose of business. Some cases are referred by Mr. Jain, learned counsel for the respondent, wherein the expenditure on treatment has been allowed, but that depend upon the fact of each case.

12. It is true that there is no bar to allow the expenditure on treatment but the pertinent question is whether the expenditure is for the purpose of business, that depends on the facts of each case. In the case in hand, the Income Tax Officer and Commissioner (Appeals) both found that expenditure is of personal nature and not for the purpose of business.

13. When assessee claimed that this particular expenditure is for the purpose of business, the burden to establish prima facie lies on the assessee to place on record the material in support of this claim. No such material has been placed on record in this case except the resolution of the Board of directors.

14. We cannot forget in this case the fact that Mr. Golecha is Managing Director of the company. In such cases when there is a question of payment to tile Managing Director by the company, the Board of directors may allow the payments to the Managing Director without considering the fact that whether the payment is for the purpose of business or not. In such cases, the assessing officer has every light to look into the nature of expenses and if they are not for the purpose of business, that type of expenses can be disallowed. That has been done in this case. Learned counsel for assessee also failed to show us how this expenditure is for the purpose of business.

15. The Tribunal has committed error in allowing this type of expenditure which is not for the purpose of business. The finding of Tribunal is perverse. In the absence of any material, the Tribunal has allowed the expenditure which has not been incurred for the purpose of business.

16. Considering the aforesaid facts, we upheld the view taken by the assessing officer and Commissioner (Appeals).

17. In the result, we answer first question that assessee is entitled for deduction in respect of power charges and engine-hire charges. However, the assessee is not entitled for depreciation. Question No. 2 we answer in negative, i.e., in favour of the revenue and against the assessee.

18. The reference so made stands disposed of accordingly.