Cit Vs. Instrumentation Ltd.

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Court : Rajasthan

Decided On : Aug-05-2002

Reported in : (2002)177CTR(Raj)269; [2002]258ITR513(Raj); [2002]124TAXMAN754(Raj)

Appeal No. : D.B. IT Reference No. 53 of 1995 5 August 2002

Appellant : Cit

Respondent : instrumentation Ltd.

Advocate for Pet/Ap. : Anuroop Singhi and J.K. Singhi, *for the Revenue* A. Kasliwal, *for the Assessee*

Judgement :
ORDER

On an application, filed under section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the Tribunal has referred the following questions for our opinion:

'Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition of Rs. 97,973 by holding that giving of gifts and presents does not amount to hospitality and cannot be considered for disallowance as entertainment expenditure ?'

'Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that provisions of section 37(4) of the Income Tax Act, 1961 start with a non obstante clause and cover only section 37(1) of the Income Tax Act and, therefore, they are not supposed to apply to any other provision of the Income Tax Act and further holding that since the guest house rent was paid and allowed under section 30 of the Income Tax Act, 1961, provisions of section 37(4) could not be read to disallow any rent payable by the assessee and thereby deleting the disallowance/addition of guest house rent of Rs. 2,39,980 ?'

2. The assessee- company is engaged in the business of manufacturing of process control instrumentation system and sales/installation thereof. The relevant assessment year is 1988-89. During the course of assessment, the assessing officer noticed that the assessee has claimed deduction of Rs. 97,973 on account of gifts and presents made to the customers. The assessing officer disallowed the claim of the assessee by invoking the provisions of section 37(2A) of the Act. The Commissioner (Appeals) has confirmed this disallowance.

3. Whether the gifts made which are exceeding Rs. 50 should be allowed or not in view of the provisions of section 37(2A), issue similar to this has been considered by us in the case of Modern Threads (India) Ltd. v. CIT (D.B. IT Reference No. 2/93 dated on 6-9-2002), wherein we answered the question in favour of the revenue and against the assessee.

4. The facts relating to question No. 2 are that the assessee incurred expenses on maintenance of the guest house and also paid rent for the building used as guest house. The Income Tax Officer disallowed the claim of the assessee invoking the provisions of section 37(4) and that view has been confirmed by the Commissioner (Appeals).

5. In appeal before the Tribunal, the Tribunal has taken the view that guest house expenses are allowable under section 30, therefore, it does not come within the meaning of section 37(4). The Tribunal placed reliance on the decision of the Bombay High Court in the case of CIT v. Chase Bright Steel Ltd. (No. 1) : [1989]177ITR124(Bom) .

6. Heard the learned counsels for the parties. Before we go into the facts of the case, we would like to refer various observations of the High Courts on this issue.

7. In the case of CIT v. Ocean Carriers (P) Ltd. (1995) 211 ITR 357, the Bombay High Court has considered the issue whether expenses on maintenance of the guest house are allowable after 28-2-1970 and their Lordships observed as under :

'Taking the totality of the circumstances into consideration, in our view by providing accommodation to the members of the crew as also to representatives of the assessee's principal non-resident shipping companies in these flats, the assessee-company had treated these flats as its own guest houses and since these guest houses were not maintained exclusively as a holiday home for the employees of the assessee-company, the assessee-company was not entitled to allowance under section 37(4) in respect of any expenditure on maintenance thereof incurred after 28-2-1970, nor to any depreciation allowance. The Tribunal was wrong in setting aside the order of the Commissioner of Income Tax and upholding the action of the Income Tax Officer. Hence, we answer the question referred in the negative and in favour of the revenue.'

8. The Madhya Pradesh High Court has also considered this issue in the case of Hindustan Electro Graphites Ltd. v. CIT (1988) 171 ITR 163 .

9. The Madhya Pradesh High Court has taken the view that sub-section (4) of section 37 starts with non obstante clause and when there is a special provision for guest house, the expenses on guest house under section 30 cannot be allowed. Expenses on maintenance of guest house are hit by sub-section (4) of section 37, as they are special provisions and they prevail over the general provisions of section 30.

10. In the case of United Catalysts (India) Ltd. v. CIT : [1998]229ITR233(Ker) , the Kerala High Court has also occasion to consider the similar issue and they have considered the decision of the Bombay High Court in the case of Chase Bright Steel Ltd. case (supra) as also the decision of the Gujarat High Court in the case of CIT v. Ahmedabad Mfg. & Calico Printing Co. Ltd. : [1992]197ITR538(Guj) and

have taken the view that provisions of sub-section (4) of section 37 are special provisions regarding disallowance of the expenses incurred on guest house. Therefore, the expenses, which are specifically disallowed cannot be allowed under the general provisions of section 30 of the Act.

11. Section 30 allows the deduction of rent, where the premises are occupied by the assessee as a tenant and any expenses incurred for repairing that premises, which has been taken on rent by the assessee.

12. Sub-section (1) of section 37 contemplates that any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head 'Profits and gains of business or profession'.

13. Thus, it is clear that if the expenses described under sections 30 to 36 are not allowed under those sections, that type of expenses if they are incurred for the purpose of business, they can be allowed under section (1) of section 37.

14. Sub-section (3) of section 37 provides that notwithstanding anything contained in sub-section (1), any expenditure incurred by an assessee after 31-3-1964, on advertisement or on maintenance of any residential accommodation including any accommodation in the nature of a guest house is to be allowed as deduction.

15. Sub-section (4) of section 37 provides that notwithstanding anything contained in sub-section (1) or sub-section (3), no expense shall be allowed in respect of any expenditure incurred by the assessee after 28-2-1970, on the maintenance of any residential accommodation in the nature of a guest house (such residential accommodation being hereinafter in this sub-section referred to as 'guest house').

16. If we read combindly section 30, sub-section (1) of section 37, sub-section (3) of section 37 and sub-section (4) of section 37, that makes it clear that the rent allowable under section 30 is general in nature. The provision of section 37(1) starts with non obstante clause and provides that any expenses, which are not

covered under section 30 to section 36 shall be allowed under section 37. Sub-section (3) has specifically allowed the expenses on guest house, which have been incurred after 31-3-1964. Sub-section (4) also starts with non obstante clause and provides that any expense incurred after 28-2-1970 on maintenance of any residential accommodation in the nature of guest house, that cannot be allowed. Sub-section (4) prohibits expenses incurred and allowable under sub-section (1) and sub-section (3) of section 37.

17. Sub-section (4) of section 37 withdraw the special allowance allowed under sub-section (3) of section 37, if that has been incurred after 28-2-1970. Admittedly, the expense on guest house has been incurred after 28-2-1970. Sub-section (4) of section 37 also starts with non obstante clause and that prevails over other provisions of the Act, therefore, the expenses incurred on guest house cannot be allowed under section 30. The Tribunal has committed error in allowing the expenses incurred on guest house in the year 1988-89.

18. In the result, we answer both the questions in the negative, i.e., in favour of the revenue and against the assessee.

19. Reference so made stands disposed of accordingly.