Modern Threads (India) Ltd. Vs. Cit

Modern Threads (India) Ltd. Vs. Cit

SooperKanoon Citation : sooperkanoon.com/772822

Court : Rajasthan

Decided On : May-06-2002

Reported in : (2002)177CTR(Raj)77; [2002]258ITR511(Raj)

Appeal No. : IT Raf. No. 2 of 1993 6 May 2002

Appellant : Modern Threads (India) Ltd.

Respondent : Cit

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

Judgement :

By the Court

On an application under section 256(1). of the Income Tax Act. 1961, the Tribunal has referred the following question for our opinion :

'Whether, on a proper interpretation of provisions of section 37(2A) read with Explanation 2 of the Income Tax Act, 1961, the Tribunal was justified in disallowing Rs. 19,918 being cost of gift articles by treating the same as entertainment expenses.'

2. The relevant assessment year is 1984-85. During the course of assessment. Assessing officer noticed that assessee has incurred expenses on distribution of

suit lengths, assessing officer has invoked the provisions of section 37(2A) read with Explanation 2 of the Income Tax Act, 1961 and disallowed Rs. 19,918 on the ground that the distribution of suit lengths to various person is nothing but entertainment expenses. In appeal before Commissioner (Appeals), Commissioner (Appeals) has confirmed the view taken by assessing officer. In appeal before the Tribunal, the Tribunal has also confirmed the view taken by the Commissioner (Appeals) holding that in view of the Explanation 2 of section 37(2A), the distribution of suit lengths to various persons is nothing but expenses on entertainment.

3. On reference, heard learned counsel for the parties. Mr. Kasliwal submits that the distribution of suit lengths for the purpose of business and in view of the provisions of section 37(1) of the Act, it should not be disallowed. Mr. Singhi, learned counsel for the revenue, submits that in view of the Explanation 2 to section 37(2A) of the Act, it is nothing but an entertainment and Tribunal has rightly disallowed this amount on entertainment.

4. The provisions of section 37(1) provides that if any expenses are incurred for the purpose of earning income and for profits and gains of the business or profession that expenditure should be allowed. But sub-section (2A) of section 37 starts with the non obstante clause and provides that notwithstanding anything contained in sub-section (1) or sub-section (2), no allowance shall be made in respect of so much of the expenditure which is in the nature of entertainment expenditure which is in excess of the aggregate amount computed in this sub-section. Explanation 2 to sub-section (2A) further provides and clarified the doubts that entertainment expenditure includes expenditure on provision of hospitality of every kind by the assessee to any person whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade.

5. The words 'hospitality of every kind' by the assessee to any person includes every type of expenditure on entertainment. If assessee distributes the suit lengths that cannot be taken out from the nature of entertainment expenses. Though, it may be for the business, but once the provision is there such type of expenses

cannot be allowed. As stated earlier, that sub-section (2A) starts with a non obstante clause and Explanation 2 to section 37(2A) which includes every type of expenses, therefore, in our view there is nothing wrong in the order of the Tribunal and this type of expenditure hit by the Explanation 2 to sub-section (2A) of section 37 of the Act.

In the result, we answer the question in affirmative, i.e., in favour of the revenue and against the assessee. The reference, so made, is disposed of accordingly.