

G.A. Vasant Vs. Cit

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Court : Chennai

Decided On : Jul-31-2002

Reported in : (2002)177CTR(Mad)400

Appeal No. : Tax Case Nos. 1337 to 1339 of 1990 A.Y. 1979-80, 1981-82 & 1982-83
31 July 2002

Appellant : G.A. Vasant

Respondent : Cit

Advocate for Pet/Ap. : P.P.S. Janardhana Raja, *for the assessee* T.C.A. Ramanujam, *for the Revenue*

Judgement :

ORDER

V.S. Sirpurkar, J.

This judgment shall dispose of all these tax cases, as the questions are common and can be conveniently disposed of.

2. The questions which are referred to us at the instance of the assessee are as under :

'1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that a sum of Rs. 1,15,514, Rs. 6,19,944 and Rs. 2,54,212

for the assessment years 1979-80, 1981-82 and 1982-83, debited by the assessee under the head 'Business promotion expenses' expended to run the business smoothly and profitably by way of secret commission payments and other unvouched non-descript payments, such as tips/Mamools/speed money, was not a deductible business expenditure under section 37(1) of the Act in computing the business income of the assessee ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not following the binding decisions of the Madras High Court in CIT v. Coimbatore Salem Transport (P) Ltd. : [1966]61ITR480(Mad) , CIT v. Ramakrishna Mills (Coimbatore) Ltd. : [1974]93ITR49(Mad) CIT v. Sree Rajendra Mills Ltd. : [1974]93ITR122(Mad) and CIT v. Arumugham Chettiar (1980) 125 ITR 753 ?'

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in treating the business expenditure claimed for deduction under section 37(1) as one falling under the head 'expenditure in the nature of entertainment expenditure' as envisaged under section 37(2) of the Act

4. Whether, on the facts and in the circumstances of the case, the Tribunal is justified in law in limiting the deduction of expenditure claimed in the manner it had done, either as entertainment expenditure under section 37(2) of the Act or otherwise ?'

The questions proposed by the revenue and referred to us are as under :

1. Whether, on the facts and in the circumstances of the case and having regard to the findings that the expenditure incurred were in the nature of entertainment expenditure as contemplated under section 37(2) and the provisions of section 37(2A), the Tribunal is right in law in directing to allow a sum of Rs. 25,000, Rs. 50,000 and Rs. 40,000 for assessment years 1979-80, 1981-82 and 1982-83 in addition to the allowance under section 37(2A) in the entertainment expenditure claimed as deduction

2. Whether, the Tribunal's order allowing deduction on ad hoc estimate basis which is not in accordance with the provisions of section 37(2A) is reasonable and sustainable in law?'

3. The following facts will highlight the controversy involved, the assessee is in the business of canvassing/contract agents for M/s. G.A. Vasanth Exchange. They claimed certain expenditure in the nature of sales promotion expenditure. They claimed various sums in the three assessment years with which (sic-we) are concerned. The assessment years are 1979-80, 1981-82 and 1982-83. The assessee claimed pretty huge sums in the name of expenditure made for their sales promotion and claimed deduction on that count. That claim was accepted only in part by the assessing officer, the appellate authority and also the Tribunal. Some of these amounts were in the nature of Mamools, etc. But, it is clear from the judgment of the Tribunal that, that part of the payments which were made by way of bribes (Mamools), etc., have not been allowed by the Tribunal. However, the Tribunal, considering the total extent of the business, came to the conclusion that some deductions can be given on account of the entertainment expenditure, more properly covered under sub-clause (d) to sub-section (2A) to section 37. The Tribunal has given some increased amounts by way of deductions. Insofar as the year 1979-80 is concerned, it has given a total deduction of Rs. 30,000, while for the year 1981-82 it has given a deduction of Rs. 50,000 and for the year 1982-83, it has given a deduction amounting to Rs. 40,000.

4. The learned counsel Mr. Janardhana Raja, appearing for the assessee, tried to submit that the Tribunal should have treated all the expenditure as the sales promotion expenditure and should not have treated it as entertainment expenditure. Considering the fact that the expenditure made is not supported by receipts and also considering the nature of the expenditure made, we do not think that such argument is possible on behalf of the assessee. In our view, the Tribunal was absolutely correct in holding that the expenditure made on the trips to Tirupathi, Mahabalipuram, etc., and the expenditure made for some parties by making payments to various hotels, could be treated only as entertainment expenditure, which would be well covered within section 37(2A). The Tribunal was also right in rejecting the other expenditure, which was claimed to have been

made by way of bribes, etc. The questions, therefore, are answered against the assessee and in favour of the revenue.

5. Insofar as the questions referred at the instance of the revenue are concerned, the learned standing counsel tried to urge that the Tribunal had arbitrarily granted some expenditure without reference to the actual entries in the account books. We do not think such argument is possible because the Tribunal has granted the expenditure well within the limits prescribed by the section in consideration of the extent of the business done by the assessee. We, therefore, do not find fault with that finding of the Tribunal also and choose to answer the reference against the revenue and in favour of the assessee. With this, we dispose of all the references, without any orders as to the costs.

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