ORDER SHEET

ITA 506 of 2004
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

STANDIPACK PVT. LTD.
Versus
COMMISSIONER OF I.RAX, KOL. - IV

BEFORE:
The Hon'ble JUSTICE SOUMITRA PAL
The Hon'ble JUSTICE DEBANGSU BASAK
Date : 18^{th} September, 2014.

For Revenue : Md.Nizamuddin,Advocate

The Court : Even on second call, none appears on behalf of the appellant. We find that the appeal was admitted on the following questions :

1. Whether, on the facts and circumstances of the case, the Tribunal misdirected itself in law and it adopted a wholly erroneous approach in confirming the disallowance of oveerseas travel (Rs.1,29,382/-) and education expenditure (Rs.10,42,012/-) in the aggregate sum of Rs.11,71,394/- incurred by the Appellant/Assessee company herein in respect of its trainee employee, Sri Saumya Meattle and whether and its findings on the aforesaid issue are vitiated in law having been recorded by it without any material and/or in disregard of the undisputed material facts including the relevant and vital evidences on record and whether such findings are wholly unreasonable and/or otherwise perverse ?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in concurring with the decisions of the Assessing Officer that the "Pouch Development Expenses" of 6 lakhs claimed by the assessee as deduction under section 37(1) was not allowable under the said provision of the Income Tax Act, 1961 as the Assessing Officer was of the opinion that such business expenses, if at all, could have been claimed under section 35 and/or 35A of the said Act ?

3. Whether, the Income Tax Appellate Tribunal was justified in law in concurring with the Assessing Officer that for the purpose of computing business income, the Assessing Officer could compel the assessee to press its cliam for deduction under another section of the Income Tax Act instead of the one under which the assessee had pressed its claim ?

Heard Mr.Nizamuddin, learned advocate for the respondent/revenue.

So far as the first question is concerned, we find that it is covered by assessee's own case in Standipack Pvt.Ltd. v. Commissioner of Income-tax & Ors : (2013) 350 ITR 251 (Cal).

Therefore, the said question is answered in the negative, in favour of the revenue and against the appellant.

So far as the second and third questions are concerned, we find they are inter-related.

We find that the assessing officer while negating the claim of the appellant had held as under :

> "The assessee has, during the course of the hearing of the proceedings, produced samples of pouches claimed to have been developed by the said concern on its behalf. The issue has been examined in details. The expenditure to be allowable u/s.37 of the I.T.Act 1961 should be neither an expenditure (not being described u/s.30 to 36) and not being in the nature of capital expenditure nor personal expenses of the assessee laid out on expenses fully and exclusively for the purpose of the business or profession shall be allowed in computing the income chargeable under the head 'profits & gains of business or profession'. On a plain reading of the Section it is, therefore, clear that the expenses to be allowable u/s.37(1) of the Act, it should be any expenditure of the nature which comes under the purview of Section 35 or 35A of the Act. This particular expenditure of pouch development expenses are clearly is in the nature of scientific research or acquisition of the patent rights or copy rights and comes under the purview of Section 35 or 35A of the Act. As none of the conditions mentioned in those Sections are fulfilled in this case, the expenditure so debited in the profit and loss account is disallowed."

On appeal by the assessee, the CIT held, inter alia, as under :

> "I have examined the above submission of the appellant and have gone through pages 4 to 6 of the assessment order where this has been discussed in detail by the AO. From the submission of the appellant I find that the expenditure was incurred for developing a product which was utilized by the appellant in completing the plastic pouches which it was selling. The manufacture of the film which was entrusted to another company could not be considered as a scientific research as it was not in the nature of research. It was only the nature of producing an article which the appellant required in its business and manufacture. The AO therefore was not justified in concluding firstly that the expenditure was capital in nature and therefore was under the provision of sections 35 or 35A of the Act. The appellant did not incur the expenditure for acquiring any copy rights and therefore neither of these two sections are applicable in the appellant's case. The expenditure was purely and simply a revenue expenditure incurred for the purposes of appellant's business. The appellant is therefore entitled to deduction with respect to the sum of Rs.6 lakhs. Ground number (6) of the appeal is therefore allowed and the addition of Rs.6 lakhs deleted."

Being aggrieved, on this issue the revenue preferred appeal before the learned Tribunal which had held, inter alia, as under :

“12. We have heard the rival submissions and perused the record. We have noticed that during the year under consideration the assessee debited to its P/L account an amount of Rs.6 lakhs and claimed to have been incurred for the development of pouches which it is manufacturing in its own factory and selling to different concerns. The expenses was not incurred by the assessee company itself but under an agreement with HGF Laminates Division of Paharpur Industries Limited, the amount was paid to them on behalf of the assessee company. On examination of further details filed by the assessee the assessing officer noticed that the expenditure is in the nature of research work. The assessing officer brought to the notice of the assessee that proper section dealing with this sort of expenditure are section 35 & 35A of the I.T.Act. None of the conditions specified in the sections are fulfilled in the case of the assessee. The assessee was requested by the assessing officer to explain why the expenditure should not be disallowed. We have noticed that the assessee during the course of hearing of the proceedings produced samples of pouches claimed to have been developed by M/s.H.G.F. Laminates Division of Paharpur Industries Limited on his behalf. The assessing officer held that the expenditure is allowable u/s. 37 of the I.T.Act should be neither expenditure (not being described u/s.30 to 36) and not been in the nature of capital expenditure nor personal expenses of the assessee laid out on expenses fully and exclusively for the purpose of the business or profession shall be allowed in computing the income chargeable under the head “Profits & Gains of business or profession.”. The assessing officer has mentioned that on a plain reading of section it is, therefore, clear that the expenditure to be allowed u/s.37(1) of the Act, it should be any expenditure in nature which comes undedr the purview of section 35 or 35A of the Act. He expressed the opinion that this particular expenditure of “Pouch Development Expenses” are clearly in the nature of scientific research or acquisition in the nature of the patent rights and copy rights u/s.35 & 35A of the Act. The assessing officer mentioned in his order that as none of the conditions mentioned in those sections are fulfilled the expenditure so debited in the profit and loss account was disallowed. On a careful considerations of the submissions of the assessee, we find that the expenditure was incurred for developing the product which was utilised by the assessee in completing the plastic pouches which it was selling. The manufacture of the film which was entrusted to another company may be considered as a scientific research as it is in the nature of research. We do not agree with the Ld.CIT(A) that the assessee did not incur any expenditure for acquiring any copy rights and either of these two sections 35 & 35A of the act are applicable in assessee’s case.

13. In the result, the Departmental Appeal is allowed.”

Since we find that the assessing officer and the Tribunal had dealt with the fact as to whether the expenses for pouch development are allowable or not which, in our view, is a question of fact, on this score also, the order of the Tribunal need not be interfered with. Therefore, the question nos.2 and 3 are answered in the affirmative, against the assessee and in favour of the revenue.

The appeal is disposed of.

Urgent certified copy of this order, if applied for, be given to the appearing parties on priority basis.

(SOUMITRA PAL, J.)

(DEBANGSU BASAK, J.)

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