

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.07.2012

Coram

The Honourable Mrs.Justice CHITRA VENKATARAMAN

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

TC(A). No. 307 of 2006

Commissioner of Income Tax

Chennai

... Appellant

-vs-

M/s.Vasan Publications Limited

Chennai

... Respondent

Tax Case Appeal against the order of the Income Tax Appellate Tribunal, B Bench, Chennai, dated 7.10.2005 passed in I.T.A.No.432/ Mds/ 2001 for the assessment year 1997-98.

For Appellant : Mr.K.Suresh Kumar

For Respondent : Mr.V.S.Jayakumar

JUDGMENT

(Judgment of the Court was made by CHITRA VENKATARAMAN,J)

The Revenue has preferred the appeal as against the order of the Income Tax Appellate Tribunal relating to assessment year 1997-98. The above Tax Case (Appeal) was admitted on the following substantial question of law:-

"Whether the Tribunal erred in holding that the expenditure incurred on foreign travel and medical treatment of the Managing Director and his wife is allowable as a deduction under Section 37(1) of the Income Tax Act?"

2. While completing the assessment, the Assessing Officer disallowed the sum of Rs.10,59,363/- being the expenditure stated to have been incurred by the company to meet the medical and travelling expenses of the Managing Director and his wife for his treatment in U.S.A. The Assessing Officer pointed out that there was no obligation on the assessee company to pay such huge amount towards medical expenses to the Managing Director. Further the Managing Director was not actively engaged in the business affairs of the company during the previous year. From letter dated 24.1.2000 filed by the assessee, it is seen that the Director had relinquished his responsibilities as Managing Director from 3.11.1996 and the above said expenditure was incurred only after this date. Thus, the Assessing Officer disallowed the sum of

Rs.10,59,363/-. Aggrieved by the same, the assessee went on appeal before the Commissioner of Income Tax (Appeals), who held that the claim of expenditure had to be seen from the angle of commercial expediency and was a bona fide one. He pointed out that the Director was managing the affairs of the Company for more than 30 years and the salary was much less than what would have been justified on the basis of the market trends. Further, the Managing Director developed the weekly to its present form. Thus, the decision taken by the Board of Directors was a commercially prudent decision. Consequently, the relief was granted to the assessee. Aggrieved by the same, the Revenue went on appeal before the Income Tax Appellate Tribunal. The Tribunal followed the decision of Madhya Pradesh High Court reported in 220 ITR 552 COMMISSIONER OF INCOME TAX v. STEEL INGOTS PRIVATE LIMITED as well as the decision of the Bombay High Court reported in 106 ITR 758 MEHBOOB PRODUCTIONS PVT. LTD v. COMMISSIONER OF INCOME TAX, BOMBAY CITY and submitted that Balasubramaniam, who was the Managing Director, thereafterwards became Managing Editor, had nurtured and developed the weekly Tamil Magazine and taking note of the services, the decision was taken by the Board of Directors in its General Body Meeting to finance his medical treatment. The Tribunal called this decision as a commercially viable decision. Consequently, the appeal filed by the Revenue was dismissed. Aggrieved by the same, the Revenue has preferred the above appeal.

3. Learned standing counsel for the Revenue placed reliance on the decision of this Court reported in 263 ITR 115 CIT v. SAMBANDAM SPG. MILLS and submitted that in the absence of any obligation on the part of the company to meet the medical and travelling expenses, the payment made could not be treated as one of commercial expediency. He further submitted that there are no materials to point out that the payment was made on account of commercial expediency. In the circumstances, the Tribunal committed a serious error in granting the relief to the assessee.

4. Per contra, learned counsel for the assessee placed reliance on the decision of Apex Court reported in 288 ITR 1 S.A.BUILDERS LTD v. COMMISSIONER OF INCOME (TAX) APPEALS & ANR. and submitted that the Revenue cannot put itself in the armchair of the businessman or in the position of Board of Directors to decide the commercial expediency character in meeting the medical expenses of the Managing Director. Taking note of the services rendered by the Managing Editor, who was then the Managing Director, the Tribunal rightly granted the relief. He submitted that the Apex Court held that the expression 'for the purpose of business' is wider in scope than the expression 'for the purpose of earning profits'. Even though there might not have been a commercial necessity, it was incurred on the ground of commercial expediency.

5. Heard learned standing counsel for the Revenue and learned counsel for the assessee and perused the materials available on record.

6. We agree with the contention of the Revenue. It is a matter of record that Balasubramaniam was the Managing Director of the assessee company, from which he resigned on 3.11.96. The Assessing Officer pointed out that expenditure was reimbursed only

due to the fact that the said person was main person in the family controlling the business of the assessee company. His wife, who accompanied him was a Director in the company. Thus, he viewed that the expenditure was purely a personal one and not incurred out of a commercial expediency arising out of the contractual obligation.

7. As far as the first Appellate Authority is concerned, he accepted the case of the assessee that the decision taken by the Board of Directors was a commercially prudent decision. The Tribunal confirmed this view by holding that the decision taken is a commercially viable decision. Except for stating as prudent decision or viable decision, there is hardly any material to indicate that it was expended out a commercial expediency. The commercially viable decision need not be one arising out of commercial expediency. The fact is that the said person served in the capacity as Managing Director for a period of 30 years and had contributed his efforts to come out weekly, per se, would not lead to an inference that there was commercial expediency which necessitated the company to incur expenditure which was pure and simple a personal nature. As rightly pointed out by the learned standing counsel for the Revenue, in the decision reported in 263 ITR 115 CIT v. SAMBANDAM SPG. MILLS at page 119, this Court pointed out to the need for recording a specific finding that the expenditure incurred was out of contractual obligation leading to commercial necessity. Thus, when payment is made without any reference to an obligation, leading to commercial expediency, and there being no material even otherwise to show commercial expediency on the part of the company on the decision on medical treatment, we have no hesitation in holding that the payment was not made to facilitate the business of the assessee. Thus, applying the decision of this Court reported in 263 ITR 115 CIT v. SAMBANDAM SPG. MILLS, to the facts on hand, we have no hesitation in accepting the plea of the Revenue, thereby, setting aside the order of the Tribunal.

8. As far as the decision of the Apex Court reported in 288 ITR 1 S.A.BUILDERS LTD v. COMMISSIONER OF INCOME (TAX) APPEALS & ANR. is concerned, it is no doubt true that the Revenue cannot put itself in the armchair of the businessman or in the position of Board of Directors to decide the commercial expediency character, but as already pointed out when the very fact of commercial expediency remained unsubstantiated, we hold that commercially viable decision and commercially prudent decision cannot substitute itself to the requirement of commercial expediency to grant the relief to the assessee.

9. In the circumstances, the order of the Tribunal is set aside. The Tax Case (Appeal) is allowed and the substantial question of law raised is answered in favour of the Revenue. No costs.

(C.V.,J) (K.R.C.B.,J)
20.07.2012

Index : Yes/No
Internet : Yes/No
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CHITRA VENKATARAMAN,J
and
K.RAVICHANDRABAABU,J

bg/-

To

1. The Commissioner of Income Tax, Chennai
2. The Income Tax Appellate Tribunal, B Bench, Chennai

TC(A). No.307 of 2006

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