

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1671 OF 2017

Principal Commissioner of Income Tax, Central-3 ... Appellant
Vs.
VVF Ltd. ... Respondent

Mr. A. K. Saxena for Appellant.

Mr. Madhur Agarwal a/w. Mr. Upendra Lokegaonkar i/b. Mint & Confreres for Respondent.

**CORAM : UJJAL BHUYAN,
MILIND N. JADHAV, JJ.**

DATE : MARCH 04, 2020

P.C. :

Heard Mr. Saxena, learned standing counsel, Revenue for the appellant and Mr. Agarwal, learned counsel for the respondent - assessee.

2. This appeal under Section 260-A of the Income Tax Act, 1961 (briefly 'the Act' hereinafter) has been preferred by the Revenue assailing the order dated 31.08.2016 passed by the Income Tax Appellate Tribunal, Mumbai Bench 'F', Mumbai (for short 'the Tribunal' hereinafter) in I.T.A.No.9030/Mum/2010 for the assessment year 2007-08.

3. The following questions have been proposed by the Revenue as substantial questions of law:

"1. Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the remuneration paid to the director is allowable under Section 37(1) of the Act after observing that the services were rendered by Shri Faraz G. Joshi, the Director without appreciating that during the course of search operation, Mr. Faraz G. Joshi himself admitted that he was not aware about the person who looked after the day to day business activity and since last 6 years, he was not attending the office nor was any duty

assigned to him except consultations?

2. Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the remuneration paid to the Directors is allowable under Section 37(1) of the Act after relying upon the judgment of the Supreme Court in the case of *Sassoon J. David & Co. P. Ltd. Vs. CIT (118 ITR 261)* ignoring that Hon'ble Supreme Court adjudicated upon the allowability of the payment of the retrenchment compensation to the employees, annuity paid to the Director and compensation paid for the loss of office of managing director which is not the case of the assessee?

3. Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that disallowance of Director's remuneration was not within the scope and ambit of Section 153-A of the Act when the Director himself has admitted in the course of statement recorded during the search that he was not attending office since last six years and was not assigned any duty except consultation?

4. Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in allowing the Director's remuneration by holding that he was rendering consultation and advisory services even though no evidence in support of consultation was brought on record by the assessee?

5. Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in deleting the addition made in pursuant to the report of the DRI after recording that the report has been quashed by Customs, Excise & Service Tax Appellate Tribunal (CESTAT) without appreciating that the decision of CESTAT has not been accepted by the Customs Department and appeal is pending before Hon'ble High Court of Gujarat?

6. Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in deleting the addition made in pursuant to the findings provided by DRI, a Government Agency on the ground that assessing officer did not conduct any independent enquiry and only relied upon the finding of DRI, ignoring that DRI is a Government Agency and the information provided by it can be fully relied upon?"

4. On going through the questions we are of the view that though six questions have been framed, the questions can be broadly categorized into two categories, the first category being question Nos.1 to 4 and the second being question Nos.5 and 6. Regarding the first category of

questions i.e., question Nos.1 to 4, we find that the issue pertains to disallowance of payments made by the respondent - assessee to Shri Faraz G. Joshi in the form of salary / perquisites.

5. It may be mentioned that a search and seizure action was carried out in the case of the respondent - assessee pursuant to which assessment proceedings under Section 143(3) read with Section 153-A of the Act were initiated which resulted in the assessment order dated 29.12.2009 for the assessment year 2007-08 forming part of the block period from assessment year 2002-03 to assessment year 2007-08.

6. In the course of the assessment proceedings, the assessing officer noted that search action was also carried out in the residential premises of Shri Faraz G. Joshi who claimed to be one of the Directors of the respondent - assessee. Statement of Shri Faraz Joshi was recorded under Section 132(4) of the Act. According to the assessing officer, Shri Joshi was not attending the office of the respondent - assessee for the last six years and no duties were assigned to him except some consultation. Moreover, respondent - assessee failed to provide any details regarding the nature and character of consultation. Accordingly, assessing officer held that payments made to Shri Joshi in the form of salary / perquisites was not expended wholly and exclusively for the purpose of business of the respondent - assessee. Accordingly, an amount of Rs.3,00,00,000.00 claimed as paid to Shri Joshi as salary / perquisites was disallowed being not expended wholly and exclusively for the purpose of business of the respondent - assessee.

7. Aggrieved by the aforesaid order of the assessing officer, respondent - assessee preferred appeal before the Commissioner of Income Tax (Appeals) - 41, Mumbai, hereinafter referred to as 'the first appellate authority'. By the appellate order dated 04.11.2010, the first appellate authority held that respondent - assessee had failed to prove that Shri Joshi had rendered services to the respondent - assessee.

Therefore, the amount claimed to be paid as salary to Shri Joshi was disallowed and the order passed by the assessing officer was upheld.

8. Being aggrieved, respondent - assessee carried the matter further in appeal before the Tribunal. Tribunal referred to the questions put to Shri Joshi and the answers given by him during the assessment proceedings. The questions and answers are as under:

“Q.9 What is the nature of business conducted by the company i.e., M/s. VVF Ltd.?”

A.9 The company deals in Oleo-chemicals. We also work on contract basis for Johnson & Johnson & Racket - Colman.

Q.10 Who looks after the day to day activity of that company and what are the duties assigned to you?

A.10 I am not aware about the person who looks after the day to day business activity. Since last 6 years I am not attending the office nor any duty is assigned to me except consultation.”

9. On due analysis, Tribunal took the view that Revenue had over-emphasized the words in the answer given by Shri Joshi. Tribunal noted that Shri Joshi was a whole time Director, rather a promoter - Director of the respondent - assessee, since 1972. In response to the specific query as to who looked after the respondent - assessee on day-to-day basis, Shri Joshi had answered that he was not aware about who actually looked after the day-to-day business activity since for the last 6 years, he was not attending office but rather involved in consultation. The answer given by Shri Joshi was quite reasonable and no adverse inference could be drawn therefrom.

10. Besides, Tribunal also found that in all the assessments made upto the date of the search, salary payment to Shri Joshi was allowed. Even post-search from the assessment year 2009-10 onwards where assessments have been made under Section 143(3) of the Act, salary paid to Shri Joshi was not disallowed. In such circumstances, Tribunal set aside the order of the assessing officer as affirmed by the first appellate authority on this count.

11. Supreme Court in the case of *Sassoon J. David & Co. Pvt. Ltd. Vs. CIT*, **118 ITR 261** examined the expression “wholly and exclusively” appearing in Section 10(2)(xv) of the Income Tax Act, 1922 which corresponds to Section 37 of the Act. Sub-section (1) of Section 37 says 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”. It was observed that the expression “wholly and exclusively” appearing in the said section does not mean “necessarily”. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity. If it is incurred for promoting the business and to earn profits, the assessee can claim deduction under Section 10(2)(xv) even though there was no compelling necessity to incur such expenditure. The fact that somebody other than the assessee is also benefited by the expenditure should not come in the way of an expenditure being allowed by way of deduction under Section 10(2)(xv) of the Act.

12. In the light of the above, we do not find that question Nos.1 to 4 as proposed by the Revenue raise any substantial question for consideration of the Court. Consequently, the said questions are not admitted for adjudication.

13. In so far question Nos.5 and 6 are concerned, we find that Tribunal relied upon the order of the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) dated 04.12.2014 in the assessee’s own case and deleted the additions made by the assessing officer. We have been informed that Commissioner of Customs has assailed the finding returned by the CESTAT before the High Court of Gujarat in Tax Appeal No.109 of 2017 and by order dated 16.02.2017, the High Court of

Gujarat has admitted the said tax appeal on the substantial questions of law framed thereunder.

14. Consequently, we admit this appeal on question Nos.5 and 6 above.

15. Since Mr. Madhur Agarwal represents the respondent - assessee, he waives notice for the respondent.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

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