IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.199 OF 2002

Indian Galvanics Cyrium Foils Ltd.
a company registered under the
Indian Companies Act, 1956 and having
its office at 1009-10, Maker Chamber
V, Nariman Point, Mumbai-400 021. ......Appellant

V/s.

1 Deputy Commissioner of Income-tax
CIR 4(4),
Aaykar Bhawan, M.K.Road,
Mumbai-400 021.

2 The Commissioner of Income-tax
(Appeal)-XLI, Aaykar Bhawan,
M.K.Road,
Mumbai-400 021.

3 Income-tax Appellate Tribunal
Bench, Mumbai Bench 'A', CGS
Building, M.K.Road,
Mumbai-400 020. ....Respondents

Mr. Pulkit Sharma with Mr. Sanket Shah i/by Akshar Laws, Advocates for Appellant.
Mr. Suresh Kumar , Advocate for Respondents.

CORAM : M.S.SANKLECHA &
SANDEEP K. SHINDE, JJ.

RESERVED ON : 27TH JUNE, 2018.
PRONOUNCED ON : 6TH JULY, 2018

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JUDGMENT :

This Appeal under Section 260A of the Income-tax Act, 1961 (Act) is preferred by the Appellants-Assessee against the order dated 18.10.2001 (hereinafter referred to as 'impugned order') passed by the Income Tax Appellate Tribunal (Hereinafter referred to as 'Tribunal'), Mumbai Bench 'A', Mumbai in relation to Assessment Year 1997-98. The Appeal was admitted on 2.9.2014 on the following substantial question of law:

> *" Whether the Tribunal erred in law in disallowing an amount of Rs.11,76,540/- as a business expenditure under the Income Tax Act, 1961 ? "*

Factual matrix:

2 The Appellants-Assessee is a closely held industrial company engaged in manufacturing copper foils at District: Gandhi Nagar. It's administrative office is at Mumbai. During the previous year ending on 31.3.1997, the Appellant-Assessee incurred expenditure of Rs.11,76,540/- under the head 'Management Training and Development expenditure'. It was incurred for higher education and training of Shri Harsh Kumar who had been sent to USA for course in "Business Administration". Shri

Harsh Kumar is son of one of the directors, Shri Arun Kumar Dalmia.

3 In the course of the assessment, it was explained that expenditure was incurred for the purpose of Appellants' business, so as to ensure better administration in long run. That, as such Appellants thought it fit to train suitable employee. It is Appellants' case that an agreement was executed by the concerned employee, who then had committed to serve Appellants-Assessee for ten years. It was brought to notice of the Income-tax Officer that after completing education and training, Shri Harsh Kumar was serving Appellants-Assessee for three years. It is on this premise it was claimed that expenditure then incurred on his education and training was incurred wholly and exclusively for the purpose of business.

4 Explanation given by the Appellants-Assessee was rejected vide assessment order dated 28.2.2000.

5 Aggrieved by the above disallowance , the Appellants-Assessee preferred an appeal before the Commissioner of Income-tax (Appeals,)XLI, Mumbai. The appeal was allowed vide order dated 15.9.2000.

6 Being aggrieved by the order passed by the CIT (Appeals), Respondent No.1 preferred an appeal before the Tribunal on various grounds which was allowed and resultantly disallowance was restored as made by the Assessing Officer.

7 That against the order of the Tribunal, this Appeal is preferred.

8 Mr.Sharma the learned counsel for the Appellants submitted that the Tribunal had erred in confirming disallowance by ignoring evidence i.e. appointment letter of concerned employee, copy of resolution passed by the Board of Directors, agreement with the concerned employee and the fact that concerned employee was serving Appellants-Assessee after completing his education and training abroad. Mr. Sharma thus submitted expenditure incurred by the Appellants for education and training of it's employee was for securing better administration of the Appellants and the fact that the concerned employee was serving Appellants-Assessee after completing education and training has established a 'nexus' between the expenditure incurred by the

Appellants and it's business. Mr. Sharma also submitted that finding recorded by the Tribunal that, there was no nexus between the expenditure incurred by the Appellants-Assessee and its business is incorrect and material placed on record was self-evident of 'nexus'. Mr. Sharma relied upon following judgment in support of his submissions:

(1) Sakal Papers Pvt. Ltd. v. CIT, Poona 1977 SCC Online Bom 199;

9 That, on the other hand, Mr. Suresh Kumar the learned counsel appearing for the Revenue would submit that Shri Harsh Kumar is son of one of the directors of the Appellants-Assessee and he had gone to attend the course of, Business Administration, which is of “general” in nature, in-as-much as it is neither in special subject nor related to business activities of the Appellants-Assessee. Mr. Suresh Kumar further submitted that expenditure incurred by the Appellants-Assessee had no nexus with the business of the Appellant. He further submitted that attending circumstances on record divulge that the expenditure incurred by the Appellants-Assessee on such a course was a personal expenditure of the Appellants' director and not business expenditure. Mr. Suresh Kumar further submitted that if the Appellants were genuinely attempting to secure better administration and was in need of such person, Appellants could have sent some other employee for completing course in the business administration. He thus submitted, having chosen son of one of the directors for completing course which was of “general”, in nature, it cannot be said that Appellants-Assessee have established nexus between the expenditure and its business activities. He has also submitted that course in 'Business Administration' was readily available in India and Appellants have not placed on record any material as to why employee was sent to USA ?

10 Mr. Suresh Kumar in support of his submission has relied on following two judgments:

(1) Shreenath Motors (P) Ltd. v. Commissioner of Income-tax-V, Mumbai; [2014] 365 ITR 538 Bom;

(2) Divyakant C. Mehta v. Income-tax Officer, 11(2)(2) [2014] 46 taxmann.com 266 (Bombay).

11 We have gone through the facts of the case as well as judgments cited by the Appellants as well as by the Revenue.

12 In the case of **Sakal Papers Pvt. Ltd. (Supra)**, dispute was related to expenditure incurred by Sakal Papers on the education of daughter of director in USA. In the given case, daughter of the directors was holding master's degree in Arts from Pune University with English and French as special subjects and was working in the editorial department of the Sakal Papers since September, 1955 as an apprentice on salary of Rs.50/- per month. After serving Sakal Papers for a period of five years, in March, 1960, directors of Sakal Papers passed a resolution that she should be sent for specialised education in journalism and business administration in a university of good standing in USA which directors believed would be good for the progress of the Paper. She secured a degree from the university of Columbia in journalism and after obtaining practical training once again joined editorial department of the Sakal Papers and was still working with it though there was no agreement between her and Sakal Papers.

Thus, Sakal Papers, claimed deduction of Rs.29,654/- as business expenditure. The Tribunal in the given case disallowed the said expenditure on the ground that there was no commitment, contract or bond taken from trainee. Issue came up before this Court in Income Tax Reference No.49 of 1968 and the following question was referred:

> *" Whether on the facts and circumstances of the case, expenditure incurred on foreign education of Ms. Parulekar was allowable as a deduction in determining the business profits of the Company for the Assessment Year 1961-62?"*

That in the Reference, reasons given by the Tribunal were found unsustainable and as such, Reference was answered in affirmative in favour of the Assessee.

In our view, the facts in the case of **Sakal Papers (Supra)** were altogether different in-as-much as in the said case, daughter of the director was post-graduate in Arts with English and French subjects and was serving with the company in editorial department nearly for five years before she was sent for the training and further education in journalism. That after securing degree from reputed university in USA, she again started working with editorial department of Sakal Papers. Thus, there was dependable evidence to hold that expenditure incurred by Sakal Papers was for securing better services and for promoting its business.

In the case in hand, Appellants-Assessee is a company manufacturing copper foils. Son of one of the directors was sent to USA for completing course in Business Administration which was 'general' in nature and had no direct nexus with the business activities of the Appellant-Assessee. Appellants did not place better particulars on record like, basic qualification of Mr. Harsh Kumar; subjects in which he did his administration course; how such subjects has-had nexus to business activities of Appellant and so on. Though a contract was placed on record whereby Mr. Harsh Kumar had agreed to render his services after completing his education and training, but that itself was not sufficient to hold that the Appellants-Assessee has proved nexus between the expenditure and its business activities.

13 That in the case of **Shrinath Motors (Supra)** somewhat similar issue fell for consideration before this

Court wherein the Appellant-Company had paid fees of Rs.1,75,000/- on behalf of one of its directors for completing course from S.P.Jain Institute of Management and Research. Deduction was claimed for such an expenditure which was disallowed throughout upto Tribunal. Against that order of the Tribunal, Shrinath Motors Private Ltd. had filed an appeal before this Court. While dealing with various contentions, which were almost similar to the case in hand, the Division Bench of this Court after taking survey of various judgments including that of **Divyakant C. Mehta (Supra)** upheld the orders of Authorities and dismissed the appeal filed by the Appellant.

14 It may be stated that in the case of **Divyakant C. Mehta (Supra)**, the Appellant-Assessee had claimed deduction of Rs.22,25,614/- as expenditure incurred for higher education for his daughter. Justification for the said deduction was that she joined his firm of advocates and had given undertaking that on attending higher qualification and degree from university abroad, she would join firm for minimum period of five years and thus, said expenditure was incurred for the business of the Assessee

and was allowable as deduction. Facts of the case in hand are almost similar, in-as-much as son of one of the directors was sent abroad for acquiring degree in 'Business Administration' and expenditure incurred for higher education was claimed as deduction which was sought to be supported by contract/agreement which was in nature of commitment of Mr. Harsh Kumar that he would serve Appellants-Assessee after acquiring degree in 'Business Administration'.

15 We thus, conclude that amount which is claimed by the Appellants-Assessee as deductible allowance was not incurred wholly and exclusively for the purpose of business of the Appellants-Assessee.

16 That, for the reasons, as stated, here-in-above, we answer the questions in negative i.e. in favour of Revenue and against the Appellants.

(SANDEEP K. SHINDE, J) **(M.S.SANKLECHA, J)**

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