

IN THE HIGH COURT OF CALCUTTA

ITA No.624 of 2004

J K INDUSTRIES LTD

Vs

**COMMISSIONER OF INCOME TAX
(CENTRAL-1)**

Bhaskar Bhattacharya and Sambuddha Chakrabarti, JJ

Dated: March 17, 2011

Appellants Rep by: Mr J P Khaitan, Mr Sanjoy Bhowmick

Respondents Rep by: Mr R N Bandopadhyay, Mrs S Das Dey

JUDGEMENT

Per: Bhaskar Bhattacharya:

This appeal under Section 260A of the Income-tax Act, 1961 is at the instance of an assessee and is directed against an order dated June 29, 2004 passed by the Income-tax Appellate Tribunal, 'D' Bench, Calcutta, in Income-tax Appeal being ITA No.2471/Kol/2003 for the assessment year 2001 by which the Tribunal has affirmed the order passed by the Commissioner of Income-tax Appeal.

A Division Bench of this Court at the time of admission of this appeal formulated the following substantial question of law:

"1) Whether the Tribunal was justified in law in disallowing the foreign travel expenditure of the spouses of the appellant's Managing Directors and Deputy Managing Directors who accompanied their husbands on business visit and its purported findings that the accompaniment of the spouses was not for business expedience/purpose of the business/direct or indirect benefit to the appellant and disallowing the expenditure of Rs.7,92,058/- for the assessment year 2000-01 are arbitrary, unreasonable and perverse?"

The facts giving rise to filing of this appeal may be summed up thus:

a) The assessee is a company which took a resolution by its Board of Directors on 5th May, 1986 to the following effect:

"For the business of the Company, the Managing Director is required to go on tours to countries abroad. If on such tours he is accompanied by his wife, it goes a long way to benefit the Company since warm human relations and social mixing promotes better business understanding. Also wife of the Director is sometimes required to accompany him on his tour abroad as a matter of reciprocity in international business. In the circumstances, it was felt that wife of the Managing Director may

accompany him on tours abroad as and when necessary. The matter was discussed and there being unanimity on the point, it was.

RESOLVED that the Managing Director of the Company be and is hereby authorised whenever necessary to take his wife on his tours overseas for the business of the company and that the travel expenses of the wife be borne by the Company subject to the approval of the Reserve bank of India, where necessary.

The Board may be apprised of the Managing Director's visit abroad."

b) Pursuant to the said resolution, for the relevant assessment year, the company sent its Managing Director and the Deputy Managing Director abroad along with the respective wives for the purpose of assessee's business. According to the assessee, in order to strengthen the business relation and promote better business understanding, it was necessary for the Managing Director and the Deputy Managing Director to be accompanied by their respective wives in accordance with the practice abroad. The assessee, consequently, in keeping with the practice of modern times and social customs sent those two officers along with their respective wives and on the foreign travel of the two wives of the two officers, the total expenditure amounted to Rs.7,92,058/- and the assessee claimed deduction of the aforesaid amount as business expenditure.

c) The Assessing Officer turned down such claim holding that those two ladies were not the employees of the assessee and the expenses of their foreign tour could not be allowed as business expenditure.

Being dissatisfied, the assessee preferred an appeal before the Commissioner of Income-tax Appeal but the said appellate officer by his order dated 25th April, 2003 was pleased to dismiss the said appeal.

Being dissatisfied, the appellant preferred a further appeal before the Income tax Appellate Tribunal and by the order impugned herein, the said Tribunal has dismissed the abovementioned claim of the assessee of Rs.7,92,058/- by upholding the views of the CIT (Appeal).

Being dissatisfied, the assessee has come up with the present appeal.

Therefore, the short question that arises for determination in this appeal is whether the expenditure made by the assessee for the foreign travel of the spouses of the Managing Director and the Deputy Managing Director who accompanied their husbands on business visit should be treated to be business expenditure of the appellant so as to claim deduction in terms of Section 37 of the Income-tax Act.

Mr. Khaitan, the learned Senior Advocate appearing on behalf of the appellant, strenuously contended before us that the aforesaid business expenditure claimed by his client was in tune with the decision taken by the Board of Directors of the company and as such it is open to his client to claim such amount as business expenditure. By referring to the decision of the Supreme Court in the case of *Commissioner of Income-tax, Bombay vs. Walchand & Co. Pvt. Ltd., reported in (1967) 65 ITR 381= AIR 1967 SC 1435*, Mr. Khaitan contends that it is open to the Tribunal to come to a conclusion either that the alleged payment is not real or that it

is not incurred by the assessee in the character of a trader or that it is not laid out wholly or exclusively for the purpose of business of the assessee and to disallow it. But it is not the function of the Tribunal to determine the expenditure for the business was justified.

By relying upon the said decision, Mr. Khaitan contends that the assessee having decided to spend that amount as reasonable business expenditure, the Assessing Officer, Commissioner of Income-tax (Appeal) and the Tribunal below erred in law in disallowing the same.

In this connection Mr. Khaitan further relies upon a Division Bench decision in the Kerala High Court in the case of *Commissioner of Income-tax vs. Appollo Tyres Ltd.*, reported in (1997) 237 ITR 706 where under the similar circumstances, the expenditure for the wife of the accompanying Managing Director on his foreign tour was found to be business expenditure of the assessee.

Mr. Khaitan, therefore, prays for setting aside the order impugned and for answering the formulated question in favour of the Assessee.

Mr. Bandopadhyay, the learned Advocate appearing on behalf of the Respondent-Revenue, has, however, opposed the aforesaid contention advanced by Mr. Khaitan and has relied upon the reasons assigned by the authorities below that those two ladies being not the employees of the assessee, the amount spent for their foreign tour cannot be described as business expenditure of the assessee. Mr Bandopadhyay, therefore, prays for dismissal of this appeal.

After hearing of the learned counsel for the parties and after going through the resolution taken by the assessee regarding the expenditure for foreign tour of the wife of the Managing Director, we find that in the resolution, the Company had not taken decision for spending on the foreign tour of the wife of a Deputy Managing Director and thus, the amount claimed for the foreign tour of the wife of the Deputy Managing Director is on the face of it not authorized by the said resolution and cannot be considered for deduction under Section 37 of the Act.

However, as regards the expenditure made for the foreign tour of the wife of the Managing Director, the same is definitely authorized by the resolution of the Board of Directors and, therefore, we propose to consider whether such expenditure can be excluded as the business expenditure of the company within the meaning of Section 37 of the Act.

In the Act itself the word 'business expenditure' has not been defined but Sections 30 to 37 deal with the claim of deduction on business expenditure. According to those provisions, if any expenditure is made in the nature mentioned in Sections 30 to 36 of the Act, those must be in tune with those provisions, but if any other expenditure is made which is not in the nature prescribed in Sections 30 to 36 of the Act those can be allowed as business expenditure provided those are not of the nature of personal expenditure or capital expenditure.

There is no dispute that amounts spent for the foreign tour of the wife of the Managing Director is not in the nature of capital expenditure. Therefore, the only question is whether the same is in the nature of personal expenditure so as to deprive the assessee of the benefit of Section 37 of the Act.

In the case before us, the fact that the Managing Director of the Company visited the foreign country for the purpose of the business of the assessee is not in dispute and the Assessing officer has also accepted such expenditure on the Managing Director for the above purpose as the business expenditure of the assessee. The fact that his wife also accompanied him on such tour is not in dispute. It appears from the resolution of the Board of Directors of the assessee that the wife of the Managing Director accompanied him because of the following decision of the Board:

"If on such tours he is accompanied by his wife, it goes a long way to benefit the Company since warm human relations and social mixing promotes better business understanding. Also wife of the Director is sometimes required to accompany him on his tour abroad as a matter of reciprocity in international business. In the circumstances, it was felt that wife of the Managing Director may accompany him on tours abroad as and when necessary."

Thus, it was a decision of the Company to send her for promoting better business understanding and as a matter of reciprocity in international business for the reasons thought fit by the Company. Therefore, the reason assigned by the Tribunal, that as the wife of the Managing Director is not an employee the expenditure made for her foreign tour cannot be accepted as business expenditure, is not tenable in the eye of law. It is not the law that business expenditure should be limited to the expenditure made for an employee only.

As pointed out by the Supreme Court in the case of The Commissioner of Income-tax, Bombay vs. M/s. Walchand and Co. (Pvt.) Ltd., Bombay (supra), the Income-tax authorities have to decide whether the expenditure claimed as an allowance was incurred voluntarily and on grounds of commercial expediency. In applying the test of commercial expediency for determining whether the expenditure was wholly and exclusively laid out for the purpose of the business, the Supreme Court proceeded, the reasonableness of the expenditure has to be adjudged from the point of view of the businessman and not of the Revenue. In the said case, the Income-tax Officer was of the view that there was no adequate increase in the earnings of the assessee, for the increase in remuneration was not reflected in the increase in profits of the assessee and that it appeared that as compared to the previous years, the business profits disclosed by the assessee had fallen by Rs.2 lac and, therefore, the increase in expenditure could not be justified as laid out wholly and necessarily for the purposes of the business. The Supreme Court, however, disapproved the said reason and held that an employer in fixing the remuneration of his employees is entitled to consider the extent of his business, the nature of the duties to be performed, and the special aptitude of the employee, future prospects of extension of the business and a host of other related circumstances. The rule that increased remuneration can only be justified if there be corresponding increase in the profits of the employer was erroneous.

Applying the aforesaid principle to the facts of our case, we hold that when the Board of Directors of the assessee had thought it fit to spend on the foreign tour of the accompanying wife of the Managing Director for commercial expediency, the reasons being reflected in its resolution quoted by us, it was not within the province of the Income-tax Authority to disallow such expenditure by sitting over the decision of the Board, in the absence of any specific bar created by the Statute for such expenditure.

We, therefore, set aside the order of the Tribunal below and partly allow this appeal by directing the Assessing Officer to give benefit of deduction on the amount spent on the foreign tour of only the wife of the Managing Director and not on that of the wife of the Deputy Managing Director as business expenditure and we, thus, answer the point formulated by the Division Bench in the affirmative only to the extent indicated above.

In the facts and circumstance, there will be, however, no order as to costs.