

Income-tax Reference No. 211 of 1995

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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Income-tax Reference No. 211 of 1995

Date of Decision: July 1, 2010

The Commissioner of Income-tax, Patiala

--- Petitioner

Versus

M/s. Punjab Tractors Ltd, Mohali.

--- Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL  
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

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**PRESENT:** Ms. Urvashi Dugga, Advocate  
for the petitioner.

Mr. Pankaj Jain, Advocate  
for the respondent.

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**AJAY KUMAR MITTAL, J.**

The Income-tax Appellate Tribunal, Chandigarh Bench, Chandigarh (in short "the Tribunal"), at the instance of the Revenue, pursuant to the directions of this Court, issued vide order dated 20.7.1993, in petition filed under Section 256(2) of the Income-tax Act, 1961 (for short "the Act"), has referred the following question of law for the opinion of this Court:

"Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding the expenditure

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involved in the cost of tractors gifted away to foreign Government, as allowable under Section 37(1) of the Income-tax Act?”

The dispute referred to herein pertains to the assessment year 1980-81. The assessee-respondent, while filing its revised return, excluded certain expenditure made on entertainment and on account of gifts. The Assessing Officer disallowed the expenditure of Rs. 1,51,570/- pertaining to tractors gifted to foreign Governments, under Rule 6-B of the Income-tax Rules, 1962 (in short “the Rules”). This expenditure was held to be disallowable by the Assessing Officer as business expenditure as well as for purpose of weighted deduction under Section 35-B of the Act. The disallowance of the expenditure was upheld vide order dated 16.8.1985 by the Commissioner of Income-tax (Appeals), Chandigarh.

The assessee carried the matter before the Tribunal. The Tribunal also, vide order dated 25.4.1990, upheld the disallowance of the expenditure. Subsequently, the assessee moved a miscellaneous petition. The Tribunal on re-consideration of the matter recalled its order dated 25.4.1990 and deleted the disallowance of the expenditure vide order dated 26.6.1991, on the ground that the tractors sent by the assessee to foreign trade fairs were subsequently given to the foreign Governments and to the delegates of the foreign countries, as gifts. The cost of the tractors was Rs. 1,45,970/- and a sum of Rs. 5,600/- was the freight and packing charges etc. The Tribunal observed that it was uneconomical to bring back the tractors to India and, therefore, the expenditure

incurred by way of gifts is liable to be treated as expenditure incurred for the purpose of business. The Tribunal observing further that it was not an expenditure on advertisement but incidental to the carrying on the business held the said amount allowable under Section 37(1) of the Act.

The point for consideration in this Reference, therefore, is, whether the cost of the tractors, which were gifted away to foreign governments, was an allowable deduction under Section 37(1) of the Act?

Section 37(1) of the Act, at the relevant time, reads thus:

“37. General –(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and Section 80VV, 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.”

**[Explanation-** For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]

A plain reading of the aforesaid provision clearly shows that Section 37(1) of the Act is a residuary provision and it provides

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deductions of all expenditure which is neither capital expenditure nor personal expenses of the assessee but incurred wholly and exclusively for the purpose of business where such expenditure is not expressly covered by any specific provision of the Act. In other words, the following conditions are required to be satisfied before an expenditure is eligible to be allowed under this residuary provision:-

- (a) the expenditure must not fall under Sections 30 to 36 and Section 80VV;
- (b) the expenditure must have been incurred wholly and exclusively for the purposes of the business of the assessee;
- (c) the expenditure must not be capital expenses;
- (d) the personal expenditure of the assessee is not allowable;

Applying the aforesaid conditions to the present case, it cannot be said that gift of the tractors to foreign governments and expenses on freight and packing etc. are not for business expediency and would not fall under Section 37(1) of the act. The Tribunal, on re-consideration of the matter had in its order dated 26.6.1991 recorded that since the tractors were sent abroad for participation in the trade fairs for the purpose of demonstration in the fields and proving the worth thereof and all this resulted in procurement of export orders, the calling back of the tractors was not considered proper and the same were left in the foreign countries. The Tribunal commented that the tractors were entrusted to the Government, the expenditure on the said tractors could not be said to be expenditure on advertisements. The Tribunal further observed in clear terms that

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the participation in foreign trade exhibitions and the decision for not calling back the tractors due to the transactions being uneconomical has to be held for business expediency. On the basis of these observations, the Tribunal held that the claim made by the assessee in the context noticed above was allowable under Section 37(1) of the Act. In the facts and circumstances noticed above, this Court also records its concurrence to the view taken by the Tribunal. Accordingly, we answer the question referred to for the opinion of this Court against the Revenue and in favour of the assessee. The Reference stands disposed of accordingly.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**(ADARSH KUMAR GOEL)**  
**JUDGE**

**July 1, 2010**

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