

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/07/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAM

Tax Case No.1337 of 1990
and Tax Case Nos. 1338 to 1342 of 1990

M/s.G.A.Vasant
Madras. .. Applicant in T.C.Nos.1337 to 1339
of 1990 and Respondent in T.C.Nos.
1340 to 1342 of 1990.

-Vs-

The Commissioner of
Income Tax, Tamil Nadu
Madras. .. Respondent in T.C.Nos.1337 to 1339
of 1990 and Applicant in T.C.Nos.
1340 to 1342 of 1990.

References under Section 256(2) of the Income Tax Act, 1961 against
the order of the Income Tax Appellate Tribunal 'B' Bench, Madras.

!For Applicant in : Mr.P.P.S.Janardhana Raja
T.C.Nos.1337 to 1339 of 1990
and Respondent in T.C.Nos.1340
to 1342/ 1990.

^For Respondent in T.C.Nos.1337 : Mr.T.C.A.Ramanujam
to 1339 of 19 90 and Applicant Senior Standing Counsel for Income Tax
in T.C.Nos.1340 to 1342/1990.

:O R D E R

(Order of the Court was made by V.S.SIRPURKAR, J.)

This judgment shall dispose of all these tax cases, as the questions
are common and can be conveniently disposed of.

2. The questions which are referred to us at the instance of the
assessee are as under:-

" 1.Whether on the facts and in the circumstances of the case, the
Tribunal was right in law in holding that a sum of Rs.1,15,514/-,

Rs.6,19,944/- and Rs.2,54,212/- for the assessment years 1979-80, 1981-82 and 1982-83, debited by the assessee under the head 'Business Promotion expenses' expended to run the business smoothly and profitably by way of secret commission payments and other unvouched non-descript payments, such as tips/mamools/speed money, was not a deductible business expenditure u/s.37(1) of the Act in computing the business income of the assessee?

2.Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not following the binding decisions of the Madras High Court reported in 61 I.T.R.480, 93 I.T.R.49 and 122 and 125 I.T.R.753?

3.Whether on the facts and in the circumstances of the case, the Tribunal was right in law in treating the business expenditure claimed for deduction u/s.37(1) as one falling under the head "expenditure in the nature of entertainment expenditure" as envisaged u/s.37(2) of the Act?

4.Whether, on the facts and in the circumstances of the case, the appellate Tribunal is justified in law in limiting the deduction of expenditure claimed in the manner it had done, either as entertainment expenditure u/s.37(2) of the Act or otherwise?"

The questions proposed by the Revenue and referred to us are as under:-

" 1.Whether, on the facts and in the circumstances of the case and having regard to the findings that the expenditure incurred were in the nature of entertainment expenditure as contemplated u/s.37(2) and the provisions of Section 37(2A), the appellate Tribunal is right in law in directing to allow a sum of Rs.25,000/-, Rs.50,000/- and Rs.40,000/- for assessment years 1979-80, 1981-82 and 1982-83 in addition to the allowance under section 37(2A) in the entertainment expenditure claimed as deduction?

2.Whether, the appellate Tribunal's order allowing deduction on adhoc estimate basis which is not in accordance with the provisions of section 37(2A) is reasonable and sustainable in law?"

3.The following facts will highlight the controversy involved. The assessee is in the business of canvassing / contract agents for M/s. G.A.Vasanth Exchange. They claimed certain expenditure in the nature of sales promotion expenditure. They claimed various sums in the three assessment years with which are concerned. The assessment years are 1979-80, 1981-82 and 1982-83. The assessee claimed pretty huge sums in the name of expenditure made for their sales promotion and claimed deduction on that count. That claim was accepted only in part by the assessing officer, the appellate authority and also the Tribunal. Some of these amounts were in the nature of Mamools etc., But, it is clear from the judgment of the Tribunal that, that part of the payments which were made by way of bribes (Mamools) etc., have not been allowed by the Tribunal. However, the Tribunal, considering the total extent of the business, came to the conclusion that some deductions can be given on account of the entertainment expenditure, more properly covered under sub-clause (d) to sub-section 2A to Section 37. The Tribunal has given some

increased amounts by way of deductions. Insofar as the year 1979-80 is concerned, it has given a total deduction of Rs.30,000/-, while for the year 1981-82 it has given a deduction of Rs.50,000/- and for the year 1982-83, it has given a deduction amounting to Rs.40,000/-.

4.The learned counsel Mr.Janardhana Raja, appearing for the assessee, tried to submit that the Tribunal should have treated all the expenditure as the sales promotion expenditure and should not have treated it as entertainment expenditure. Considering the fact that the expenditure made is not supported by receipts and also considering the nature of the expenditure made, we do not think that such argument is possible on behalf of the assessee. In our view, the Tribunal was absolutely correct in holding that the expenditure made on the trips to Tirupathi, Mahabalipuram etc., and the expenditure made for some parties by making payments to various hotels, could be treated only as entertainment expenditure, which would be well covered within Section 37(2A). The Tribunal was also right in rejecting the other expenditure, which was claimed to have been made by way of bribes etc., The questions, therefore, are answered against the assessee and in favour of the Revenue.

5. Insofar as the questions referred at the instance of the Revenue are concerned, the learned Standing Counsel tried to urge that the Tribunal had arbitrarily granted some expenditure without reference to the actual entries in the account books. We do not think such argument is possible because the Tribunal has granted the expenditure well within the limits prescribed by the Section in consideration of the extent of the business done by the assessee. We, therefore, do not find fault with that finding of the tribunal also and choose to answer the reference against the revenue and in favour of the assessee. With this, we dispose of all the references, without any orders as to the costs.

KST.

To:

1.The Assistant Registrar
Income Tax Appellate Tribunal
Rajaji Bhavan, II Floor
Besant Nagar, Madras.

2.The Secretary, Central Board
of Revenue, New Delhi.

3.The Commissioner of Income Tax
Tamil Nadu-V, Madras.

4.The Commissioner of Income Tax
(Appeals) I, Madras-34.

5.The Income Tax Officer, City
Circle VI, Madras.

□