A K. RAVINDRANATHAN NAIR

v.

COMMISSIONER OF INCOME TAX, ERNAKULAM

NOVEMBER 30, 2000

B [S.P. BHARUCHA, DORAISWAMY RAJU AND RUMA PAL, JJ.]

Income Tax Act, 1961: Section 37

Income Tax—Business Expenditure—Deduction of—AY 1972-73—
C *Processing of cashew nuts in 10 units—Four of the 10 units situated in one State—Two out of the four units owned by assessee and the other two taken on lease—Lock-out declared in four units due to labour problems—Subsequently, settlement arrived at—Assessee agreed to pay 5 days' wages for service rendered up to lock-out—Accordingly, assessee incurred certain*
D *expenditure—Tribunal found that all the 10 units constituted one business and allowed the said expenditure as deduction—Validity of—Held : In the circumstances of the case, the expenditure incurred by the assessee is a business expenditure—Hence, assessee is entitled to its deduction.*

The appellant-assessee, an individual, carried on the business of
E **processing cashew nuts in ten units. Four of these units were situated in one State. Of these four units, the assessee owned two and two were taken on lease. Due to labour problems the assessee declared a lock-out in all these four units. Subsequently, the assessee entered into a settlement with the trade unions representing the workmen of the units in the State and agreed to pay**
F **them for the periods of their service up to the date of the lock-out, five days' wages for each year of service. Accordingly, the assessee incurred certain expenditure on this account.**

The assessee made a claim for deduction of the said sum during the Assessment year 1972-73 under Section 37 of the Income Tax Act, 1961. The
G **Income Tax Officer disallowed the claim. In appeal the Income Tax Appellate Tribunal allowed the claim. However, the High Court answered the reference against the assessee. Hence this appeal.**

Allowing the appeal, the Court

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HELD : 1. The Tribunal said that it was satisfied that all the 10 units were fully inter-linked and inter-laced so that the inevitable inference was that all these units were one business alone. The Tribunal went on to hold that the facts were sufficient to establish a nexus between the payment of five days' wages and the business. Since a part of the business had been affected by labour disputes, for the industrial health of the business as a whole, it was thought just and necessary that the industrial dispute in that one part of the business was stopped. This was the purpose for which the payment was made and it was, therefore, incurred for the purposes of the business. [247-D-E]

2.1. The High Court overlooked the cardinal principal that it is the Tribunal which is the final fact finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the High Court. [248-B, C]

2.2. Having regard to the finding that the units in the State and the other units outside the State formed one business, the expenditure must be held to have been incurred in regard to such business. [248-F]

2.3. Upon the facts found by the Tribunal, there is no getting away from the fact that the expenditure incurred by the assessee was a business expenditure and that the assessee was entitled to its deduction under Section 37 of the Income Tax Act, 1961. [248-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4475-4476 of 1998.

From the Judgment and Order dated 30.7.84 of the Kerala High Court in I.T.R. Nos. 229/79 and 74 of 1980.

S. Ganesh, Pratap Venugopal, P.S. Sudheer and K.J. John for the Appellant.

K.N. Shukla, S.W.A. Qadri, S.K. Dwivedi, Bipul Kumar and Ms. Sushma Suri for the Respondent.

The Judgment of the Court was delivered by

BHARUCHA, J. We are concerned in these appeals from a decision of a Division Bench of the High Court of Kerala, with the Assessment Year 1972-

A 73, the previous year of which ended for the assessee on 30th September, 1971. The question that was referred to the High Court and which it answered in the negative and against the assessee reads thus :

> "Whether on the facts and in the circumstances of the case, the assessee is entitled to claim deduction of Rs. 4,18,107 under Section
B 37 of the Income-tax Act?"

The assessee, an individual, carried on the business of processing cashew nuts in ten units. Four of these units were situated in Kerala. Of these four units, two were owned by the assessee and two were taken on lease. In October, 1969, the assessee faced labour problems in Kerala, consequent
C upon which he ordered a lock-out of the four units there. On 9th March, 1970, the assessee leased out the two units which he owned in Kerala to a private limited company whose only two shareholders were the assessee and his wife. The agreement in this behalf provided that the workmen employed in the two units would have continuity of service. At about the same time the lessee
D surrendered the two units in Kerala which he had taken on lease. On 21st November, 1970, the assessee entered into a settlement with the trade unions representing the workmen of the units in Kerala and agreed to pay them for the periods of their service upto the date of the lock-out five days' wages for each year of service. An aggregate payment of Rs. 4,18,107 was made in this behalf.

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The payment having been made in the course of the previous year relevant to the Assessment Year 1972-73, the assessee made a claim for the deduction of the said sum of Rs. 4,18,107 under Section 37 of the Income Tax Act, 1961. The Income Tax Officer disallowed the claim. In appeal, the claim was allowed. The Tribunal upheld the decision in appeal. From out of the
F order of the Tribunal, the question afore-stated was referred to the High Court. The High Court, by the judgment and order under appeal, answered the question against the assessee. The assessee is here by special leave.

It needs to be noted that the Revenue had sought the reference of six
G questions. The Tribunal had disallowed its application insofar as it related to five questions on the basis that the one issue, that was covered by the question quoted above, had been split up into six questions. The Revenue did not file an application before the High Court under Section 256(2) seeking the reference of the rejected five questions. It is necessary to make a point of this because none of the six questions proceeded upon the basis that the
H Revenue considered the decision of the Tribunal on facts to be perverse; in

other words, that it could not reasonably have been arrived at on the materials placed before the Tribunal. Alternatively, assuming that one or more of the questions did proceed upon that basis, the Revenue accepted the fact that they were not referred and did not carry the matter to the High Court. There was, therefore, no challenge by the Revenue to the facts found by the Tribunal before the High Court.

As we read the judgment of the Tribunal, it extensively analysed the documents placed before it and came to the conclusion that the ten units run by the assessee constituted a single business, that the four units in Kerala did not constitute a separate business and that, therefore, the payment that was made was not on account of closure of business, which would not be allowable under Section 37. The Tribunal found, on the basis of the accounts placed before it, that only one set of accounts were maintained for all the ten units. It found that there was one central financing system, that all the units were financed by banks and that these accounts were operated from the head office and that the cashew was purchased for processing by the head office for all the units together. It was also found that there was unity of management and control. Accordingly, the Tribunal said that it was satisfied that all the units were fully inter-linked and inter-laced so that the inevitable inference was that all these units were one business alone. The Tribunal went on to hold that the facts were sufficient to establish a nexus between the payment of Rs. 4,18,107 and the business. Because a part of the business had been affected by labour disputes, for the industrial health of the business as a whole, it was thought just and necessary that the industrial dispute in that one part of the business be stopped. This was the purpose for which the payment was made and it was, therefore, incurred for the purpose of the business. The Tribunal noted, correctly, that it was for the assessee to decide how he would conduct his business. For the purposes of continuing his business, he had to reduce the number of units from ten to six. Any incidental expense in reducing those units was an expenditure incurred in the course of conducting the business and allowable under Section 37.

The High Court, surprisingly, threw out all the findings of fact that were reached by the Tribunal. It did so because, in the High Court's view, the Tribunal had misdirected itself in law in arriving at these findings. This was because, according to the High Court, the Tribunal had overlooked or ignored a clinching document and because it had wrongly cast the burden of proving the facts on a party. It is difficult to appreciate what that document was that the Tribunal had supposedly overlooked or how the High Court was entitled

A to look at it if it had not been placed before the Tribunal. It was erroneous to say that any burden had been incorrectly cast by the Tribunal because the Tribunal had evaluated all the material that was put before it, regardless of who had put it on the record.

The High Court overlooked the cardinal principle that it is the Tribunal
B which is the final fact finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before
C the High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it.

The only jurisdiction of the High Court in a reference application is to
D answer the questions of law that are placed before it. It is only when a finding of the Tribunal on fact is challenged as being perverse, in the sense set out above, that a question of law can be said to arise.

The only argument, fairly, that has been raised before us by the Revenue is that this expenditure could not be said to have been incurred in the course
E of the business because the four Kerala units in respect of which the expenditure was incurred had been shut down by the assessee. This argument would be acceptable if the Tribunal had found that these four units constituted a separate business. Having regard to the finding that these and all the other units outside Kerala formed one business, the expenditure must be held to have been incurred in regard to such business.
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Upon the facts found by the Tribunal, there is no getting away from the fact that the expenditure of Rs. 4,18,107 that was incurred by the assessee was a business expenditure and that the assessee was entitled to its deduction under Section 37.

G In the result, the civil appeals are allowed. The impugned judgment and order is set aside. The question is answered in the affirmative and in favour of the assessee.

No order as to costs.

H V.S.S. Appeals allowed.