

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2015

CORAM

The Honourable Mr.JUSTICE R.SUDHAKAR
and
The Honourable Mr.JUSTICE R.KARUPPIAH

Tax Case (Appeal) Nos.1019 and 1020 of 2014
& M.P.No.1 of 2014

Commissioner of Income Tax,
Chennai. Appellant in both T.C.As

Vs.

M/s.Irbaz Shoe Company,
No.2(487) Kilpauk Garden Road,
Kilpauk, Chennai - 10. Respondent in both T.C.As

APPEALS under Section 260A of the Income Tax Act against the order dated 20.9.2013 made in I.T.A.Nos.1032&1033/Mds/2012 on the file of the Income Tax Appellate Tribunal 'A' Bench, Chennai for the assessment years 2005-06 and 2007-08.

against the order of the Income Tax Appellate Tribunal A Bench Chennai in ITA Nos.1032 & 1033/Mds/2012 in assessment years 2005--2006 & 2007-2008

against the order of the Commissioner of Income Tax (Appeals) XII Nungambakkam Chennai 600 034 dated 21.2.12 in ITA No.348 & 349/2009-2010.

against the order of the Assistant Commissioner of Income Tax Circle XIII Chennai 34 dated 31.12.2009 in AAAFI5586 M in assessment year 2005-06 & 2007-2008.

For Appellant : Mr.J.Narayanasamy
Standing counsel for Income Tax

C O M M O N J U D G M E N T

(Delivered by R.SUDHAKAR, J.)

The above Tax Case (Appeals) are filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial question of law:

"T.C. (A) No. 1019 of 2014:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that foreign travel expenses incurred towards the wife of the partner is an allowable deduction?

T.C. (A) No. 1020 of 2014:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that foreign travel expenses incurred towards Adirano Nathalini and others are allowable deduction even though no business connection was proved?"

2. The respondent/assessee, a partnership firm, is engaged in the manufacturing of leather shoe uppers. The assessee filed its return of income for the assessment years 2005-06 and 2007-08 admitting a total income of Rs. 1,08,20,770/- and 24,99,170/- respectively. The return of income for the assessment year 2005-06 was processed under Section 143(1) of the Income Tax Act. Later on the said assessment was reopened under Section 147 of the Income Tax Act and notice under Section 148 of the Income Tax Act was issued to the assessee. The Authorised Representative of the assessee objected to the reopening of the assessment stating that the foreign travel expenses have been incurred to bring buyers to India as it is a practice in this trade. The Assessing Officer, while completing the assessment for both the assessment years, not satisfied with the explanation of the assessee, disallowed the assessee's claim on foreign travel expenses spent on the wife of the partner of the firm and also on others.

3. Aggrieved by the said order of assessment, the assessee preferred appeals before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) found that during the financial year 2004-05, the assessee incurred foreign travel expenses and the Tax Audit Report revealed that the expenses are personal in nature. The Commissioner of Income Tax (Appeals) further found that the assessee's wife is neither a partner nor an employee of the assessee firm. Therefore, the Commissioner of Income Tax (Appeals) held that the assessee failed to establish the business connection with the travelling expenses of the wife of the partner. Accordingly, the Commissioner of Income Tax (Appeals) dismissed the appeals holding that in the absence of any details, it is very difficult to believe the assessee's explanation.

4. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the assessee preferred further appeals before the Income Tax Appellate Tribunal.

5. It is seen from the order of the Tribunal that the assessee is a shoe company and has been issued with a certificate of exporter/importer code. On a perusal of the partnership deed, the Tribunal found that the said partnership deed revealed that the

assessee-firm came into existence on 01.07.1993 and Smt.Ravia Aejaaz was one of the founder partners. The Tribunal took on record the said document and held that the said Mrs.Ravia Aejaaz had travelled in the capacity of the partner herself of the assessee firm, which is an importer/exporter of the shoe products and hence the expenses incurred by the said person is wholly and exclusively for the purpose of the business. For the assessment year 2007-08, the Tribunal held that no cogent reason was cited to disallow the assessee's claim. Hence, the foreign travel expenses incurred to Adirano Natalini along with other persons are wholly and exclusively for the purpose of business. Accordingly, the Tribunal allowed the appeals filed by the assessee.

6. Aggrieved by the order of the Tribunal, the Revenue has filed the present appeals before this Court.

7. Learned Standing Counsel appearing for the Revenue reiterating the findings of the Assessing Officer and Commissioner of Income Tax (Appeals) submits that the assessee has not established the business connection with the travelling expenses of the wife of the partner. In support of his contention, he placed reliance on the decision of this Court reported in (2003) 261 ITR 193 (D.B.Madan V. Commissioner of Income Tax), wherein it was held that if the object of the foreign tour by the assessee's wife was to attend on the assessee and for his personal comforts, the expenditure would not qualify for deduction though the result of such expenditure may increase the efficiency of the assessee in attending to his business. He further submits that the wife of the assessee herein was not associated with the firm of the assessee and she was not the partner of the firm. Hence, the order of the Tribunal may be set aside.

8. Heard learned standing counsel appearing for the Revenue and perused the materials placed before this Court.

9. On a perusal of the order of the Tribunal, we find that as per the partnership deed, the wife of the assessee was one of the partner of the firm. Hence, the Tribunal was justified in granting the benefit to the assessee on the basis of the partnership deed. We find no reason to discredit the finding of fact, more so, after perusing the assessment order passed under Section 143(3) read with Section 147 of the Income Tax Act, which contains no reason as to why it should not be treated as business income. The mere ipse dixit of the Officer is not a ground to deny the claim made by the assessee.

10. The reliance placed by the learned Standing Counsel appearing for the Revenue on the decision reported in (2003) 261 ITR 193 (D.B.Madan V. Commissioner of Income Tax) is distinguishable on facts. The facts therein is that the wife of

the assessee therein had travelled along with her husband citing health ground and was not associated with the company either as a partner or in any other official capacity. In the present case, the wife is the partner of the assessee firm as per the partnership agreement. Hence, the expenses incurred towards foreign travel of the wife of the assessee along with other persons should be treated as expenditure incurred wholly and exclusively for the purpose of the business.

11. In view of the above, we see no question of law much less any substantial question of law arises for consideration in these appeals. Accordingly, both the appeals are dismissed. No costs. Consequently, M.P.No.1 of 2014 is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sl

To

1. The Income Tax Appellate Tribunal 'A' Bench, Chennai
2. The Commissioner of Income Tax (Appeals)-XII, Chennai.
3. The Assistant Commissioner of Income Tax, Circle XIII, Chennai.

+ 2ccs to Mr.J.Narayanasamy, Advocate Sr.97

T.C.(A) Nos.1019 and 1020 of 2014
& M.P.No.1 of 2014

MG(CO)
Eu 22.1.15

WEB COPY