

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 312 of 2009 (O&M)

Date of Decision: 28.8.2015

M/s Aaren Exports, Jalandhar

....Appellant.

Versus

Commissioner of Income Tax-I, Jalandhar

...Respondent.

1. Whether the Reporters of the local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Mr. Rajiv Sharma, Advocate for the appellant.

Mr. Vivek Sethi, Advocate for the respondent.

**Ramendra Jain, J.**

1. The present appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (hereinafter called as 'the Act') against the order dated 28.11.2008 (Annexure A-1) passed by the Income Tax Appellate Tribunal, Amritsar, (in short 'the Tribunal') in ITA No. 347/(ASR)/2005 for the assessment year 2001-02, reversing the order of the Commissioner of Income Tax (Appeals) [for brevity "the CIT (A)"] dated 30.3.2005 (Annexure A-2) and upholding the order dated 27.2.2004 (Annexure A-3), passed by the Assessing Officer, rejecting its claim of deduction on account of 'Foreign Travel'. The appeal was

admitted by this Court vide order dated 16.11.2009 to consider the substantial questions of law proposed in para 12 of the appeal which are to the following effect:-

- A. Whether, on the facts and circumstances of the case, the Tribunal was justified in reversing a well versed order of CIT(A) in rejecting the claim of business expenditure on account of foreign travel of professionally qualified son and daughter-in-law of only male partner of the appellant firm, both son and daughter-in-law being legal heirs of the partner also and having shown growth in firms business as a consequence of their foreign travel?
- B. Whether on the facts and circumstances of the case, the Tribunal was justified in disallowing the entire foreign travel expense on the only premise that it was not incurred by a competent person, without reversing the finding of the CIT (A) that evidence produced by assessee in the shape of e-mails etc. show actual business transactions of the assessee firm?
- C. Whether impugned order of ITAT is against the well settled law and principles as laid down in the case of **Sassoon J. Davi and Co. P. Ltd. vs. CIT Bombay (1979) 118 ITR 261 (SC)** and other judgments on the issue in dispute?

D. Whether the order of the Tribunal is perverse and against the provisions of law?

2. Briefly stated, the facts necessary for adjudication of the instant appeal as narrated therein are that the appellant-assessee, a partnership firm having two partners namely S.C. Aggarwal and Smt. Anita Aggarwal filed its return of income on 31.10.2001 for the assessment year 2001-02, declaring its income at ₹ 28,08,760/- by claiming deduction of ₹ 90,39,678/- under Section 80HHC of the Act. The said return was processed under Section 143(1)(a) of the Act on 27.9.2002 and notice under Section 143(2) of the Act was issued to the assessee. The appellant-assessee was directed to justify the expenses incurred on 'Foreign Travel' for the trips undertaken by Deepak Aggarwal and his wife Shilpa Aggarwal (son and daughter-in-law of partner of appellant firm) as they were neither its Manager nor employees or agents. The appellant-assessee vide letter dated 14.1.2004 (Annexure A-4) submitted that 50% of such expenses incurred by Deepak Aggarwal and his wife Shilpa Aggarwal after marriage were debited to the capital account of one of the partners acknowledging that the foreign travel undertaken in May 2000 was not solely and exclusively for the purpose of business. In support of its claim, the appellant-assessee furnished copy of certain e-mails, Annexure A-5, showing that Deepak Aggarwal and Shilpa Aggarwal both being B.Com and MBA were looking after the total business of the appellant-assessee. They had visited European and Scandinavian countries to introduce customers and study the market there. Finally, Shilpa Aggarwal started communicating with the customers making correspondence and fully took up on herself as the

Customer Relation Department since 18.4.2000. The foreign trip of Deepak Aggarwal and Shilpa Aggarwal was purely business trips to know about the pulse of the market, demand and supply and the future prospect of the garden tools industries. However, the Assessing Officer did not agree with the aforesaid assertions of the appellant-assessee and disallowed the expenses incurred on 'Foreign Travel' done by Deepak Aggarwal and Shilpa Aggarwal treating the same as not related to the appellant firm as revenue expenses wholly and exclusively as they were neither agent nor employee or partner of the appellant-assessee vide assessment order dated 27.2.2004 (Annexure A-3). Aggrieved with the same, the appellant-assessee preferred an appeal before the CIT (A), who deleted the addition of ₹ 32,54,766/- made on account of foreign travelling expenses vide order dated 30.3.2005 (Annexure A-2). Against the said order of the CIT(A), the revenue preferred an appeal before the Tribunal. The Tribunal vide its order dated 31.8.2007 (Annexure A-7) remitted the matter to the Assessing Officer to decide the same afresh. Against the order dated 31.8.2007 (Annexure A-7), the assessee moved miscellaneous application under Section 254(2) of the Act before the learned Tribunal to recall its order dated 31.8.2007 (Annexure A-8), remanding the matter to the Assessing Officer. The revenue filed its reply dated 1.2.2008 (Annexure A-9 Colly) to the said application. The Tribunal vide order dated 17.7.2008 (Annexure A-10) recalled its earlier order dated 31.8.2007 and the appeal of the revenue was ordered to be restored to its original number for hearing "afresh". Thereafter, after hearing afresh both the sides, the Tribunal allowed the appeal of the revenue vide order dated 28.11.2008 (Annexure A-1).

However, the issue regarding deduction under Section 80HHC of the Act, the same was remitted to the Assessing Officer as was done vide earlier order dated 31.8.2007. Hence, the present appeal by the assessee on the question of claim of the assessee in respect of foreign travel expenses.

3. We have heard learned counsel for the parties and gone through the case file carefully.

4. Learned counsel for the appellant-assessee argued that the Tribunal has erred in setting aside the order of the CIT (A) without considering the fact that the same was based on the judgments in **“Sassoon J. David and Co. P.Ltd. v. CIT, Bombay, (1979) 118 ITR 261 (SC); CIT v. Aspinwall and Co.Ltd. (1999) 235 ITR 106 (Kerala); CIT v. Appolo Tyres Ltd. (1999) 237 ITR 706 (Kerala) and CIT v. Sundaram Clayton Ltd. (1999) 240 ITR 271 (Madras).** Findings of the Tribunal were cryptic being based on surmises and conjectures. The Tribunal was not justified in holding that Deepak Aggarwal and Shilpa Aggarwal were not related to the appellant-firm being not its partners or the employees, despite the fact that they had done foreign tours to enhance the business of the appellant firm being son and daughter in law of its partners. They were looking after the appellants business since last 5 years. After marriage Shilpa Aggarwal too had joined Deepak Aggarwal being a qualified MBA having knowledge of business. These facts were not disputed by the revenue. Hence, the learned Tribunal has erred in not appreciating the same and not considering the documentary evidence relatable to the business of the appellant firm which had enhanced in the subsequent years due to the personal efforts made by

Deepak Aggarwal and Shilpa Aggarwal. The Tribunal has wrongly concluded that they had no concern with the affairs of the appellant firm in any capacity, whatsoever.

5. On the other hand, learned counsel for the respondent pleaded the legality and validity of the impugned order.

6. After giving our thoughtful consideration to the respective submissions of learned counsel for the parties, we find the present appeal completely devoid of any merits. The Assessing Officer while disallowing ₹ 32,54,766/- on account of foreign travelling expenses of Shri Deepak Aggarwal and Smt. Shilpa Aggarwal had concluded that their tours were completely personal tours and not wholly and exclusively for the purpose of business. It was recorded as under:-

“3. During the year assessee has claimed travelling expenses of Rs.39,93,187/-. Assessee was asked to furnish the details along with evidence and justification of the same for business purpose. Assessee furnished copy of account of the aforesaid expenses. Details furnished revealed that out of total travel expenses a sum of Rs.39,14,814/- has been incurred on foreign travel. Out of these foreign travel expenses an amount of Rs.32,54,766/- has been incurred for the foreign travel of Sh. Deepak Aggarwal & Smt. Shilpa Aggarwal. Reamining foreign travel expenses, claimed to have been incurred for travel of Directors and employees of the firm for representing the assessee in Hardware Show in Germany.

3.1. On perusal of details furnished by assessee, it was found that travelling has been undertaken by Sh. Deepak Aggarwal along with his wife Smt. Shilpa Aggarwal in the capacity of the son and daughter-in-law of the partners. During the course of assessment proceedings it was submitted that they are neither an employee nor Manager nor Agent of the firm. Assessee was asked to establish that the travelling expenses have been incurred and the incurrence is wholly and exclusively for the purposes of business. Audit report did not indicate incurrence of travelling expenses by Sh. Deepak Aggarwal and Smt. Shilpa Aggarwal on behalf of the firm though majority of the foreign travel expenses payment has been made to Sh. Deepak Aggarwal [a person covered by section 40A (2)(b)]. Assessee was asked to justify the same with the evidence in support of work done by Sh. Deepak Aggarwal and Smt. Shilpa Aggarwal (w/o Sh. Deepak Aggarwal) none of them is either an employee or manager of the firm. Thus the firm and Sh. Deepak Aggarwal, Smt. Shilpa Aggarwal do not have any relationship otherwise than being son and daughter-in-law of the two of the partners. In view of above facts, the assessee was asked to justify the foreign travel expenses claimed by the firm in respect of their travel.

3.2. Assessee submitted vide letter dated 14.01.2004 that 50% expenses pertaining to tour in May 2000, which was the tour undertaken immediately after the marriage of Sh. Deepak Aggarwal to Smt. Shilpa Aggarwal have already been debited to the capital a/c of one of the partners of the firm. Acknowledging that the foreign travel undertaken in May 2000 was not wholly and exclusively for the purpose of business.

3.3. Assessee also furnished certain e-mail photocopies in support of its claim regarding work done by Sh. Deepak Aggarwal & Smt. Shilpa Aggarwal. These papers filed by the assessee do not have any evidentiary value. It is also noted that all correspondence is in the individual name of Mr. & Mrs. Deepak Aggarwal and they are not in the name of assessee firm. According to the assessee the travelling expenses were incurred to train Sh. Deepak Aggarwal and Smt. Shilpa Aggarwal, who were not associated with firm during the year under consideration, but later on associated themselves with the business. Thus even if, it is presumed and expenses have been incurred to train partner's son and daughter-in-law, these are not the expenses of the firm since these two persons are neither an employee nor partner, agent, Manager of the firm.

Moreover, expenses incurred on training of the manpower with the prospective use in the business is in the nature of capital expenses and not revenue. While examining books of account it was found that foreign currency has been purchased in respect of visit of Sh. Deepak Aggarwal, however there are no bills etc. accompanying those vouchers indicating that amounts have actually been spent, if at all spent, there is no evidence that it is an expense for the business purposes spent by newly married couple. Assessee was also confronted with these observations while examining books of accounts vide examination notes dated 21/01/04. The reply given by the assessee has already been discussed above.

3.4. Thereby it is clear and beyond doubt that the foreign tours undertaken by Sh. Deepak Aggarwal and Smt. Shilpa Aggarwal, being the son and daughter in law of the partners were completely personal tours and not wholly and exclusively for the purpose of business. Therefore the expenses debited under the head travelling a/c expended on foreign travel of Sh. Deepak Aggarwal and Smt. Shilpa Aggarwal are held not to be revenue expenses wholly and exclusively for the purpose of business of the assessee firm. Thus a sum of Rs.32,43,766/- under the head Travelling Expenses is disallowed u/s 37(1) of the IT Act.”

7. The Tribunal while reversing the findings of the CIT(A) on this issue had elaborately analyzed the material on record and concurred with the conclusion of the Assessing Officer with the following observations:-

“10. We have heard the parties and have perused the material on record. Out of total expenses charged of Rs.39.93 lacs, the assessee had suo moto debited the amount of Rs.3.78 lacs to the capital account of the partner, as personal in nature, incurred on the foreign travelling of Shri Deepak Aggarwal and his wife, Smt. Shilpa. It was observed by the learned CIT (A) that all the correspondence in support of the expenditure was with the parties with whom business transactions were effected by the assessee. It was also observed that the entire business of assessee was looked after by Shri Deepak and Smt. Shilpa. The correspondence being in the individual name of Shri Deepak, was taken as not detrimental to the claim of the assessee. Shri Deepak, though he was neither the employee nor a manager/agent of the assessee firm, was found involved with the business of the firm. Foreign tours undertaken during the period from 1998 to 2000 were found to have been undertaken by Shri Deepak in connection with the business of the assessee. Apropos the tour expenses of Rs.39.43 lacs during the year, Rs.32.54 lacs was

found related to Shri Deepak and his wife, Smt. Shilpa. Documentary evidence in support of the expenditure had been filed before the A.O. This documentary evidence comprises correspondence with foreign customers, dealers and agents. A summary of each and every place visited, the purpose of the visit, the business fetched etc., were produced before him. The address, the e-mal, code, fax and telephone numbers and other particulars were of the firm. The written submission filed by the assessee before the learned CIT(A), were sent by him to the A.O., seeking a remand report. The A.O., in response had nothing more to say, other than relying on the assessment order. The learned CIT(A) thus deleted the addition made by the A.O.

11. The learned CIT(A), however, erred in deleting the addition made by the A.O. It was erroneously overlooked by the learned CIT(A) that none of the evidence filed on behalf of the assessee before the A.O. proved that the expenditure in question was incurred wholly and exclusively for the business purpose of the assessee firm. The learned CIT(A) has accepted that the correspondence in respect of the expenses was not in the name of the assessee firm but was in the name of the individuals. However, this was not considered material holding that the

correspondence related to the business of the assessee firm and was with the parties with whom the business was transacted by the assessee firm. This, in our considered opinion, is not in accordance with law. The legal requirement is that the expenditure ought to have been incurred by a competent person, i.e., the employee or the Manager, etc. of the assessee firm, which neither Shri Deepak, nor his wife Smt. Shilpa was. Rather, it has been admitted by the assessee firm that neither of these persons were taken in any capacity in the assessee firm; that it was the firm of the parents of Shri Deepak; and that Shri Deepak and Smt. Shilpa did not have any relationship with the firm other than being son and daughter-in-law of the two partners of the assessee firm. The assessee had, rather, contended before the learned CIT(A) that taking Shri Deepak and Smt. Shilpa on the rolls of the assessee firm as a employee would have downgraded the status of would be owners of the family firm. Moreover, before the A.O., the stand had been that Shri Deepak Aggarwal had been under-training. Anyhow, the fact remains that neither Shri Deepak nor Smt. Shilpa had any capacity vis-a-vis the affairs of the assessee firm. As such the learned CIT (A) clearly erred in overlooking this material fact while deleting the addition.”

8. The findings have been recorded by the Assessing Officer and the Tribunal that the foreign travel expenses of Shri Deepak Aggarwal and Smt. Shilpa Aggarwal (son and daughter-in-law of the partners of the assessee firm) was on account of personal tours and not expended wholly and exclusively for business purposes and was, thus, inadmissible under Section 37(1) of the Act. It would primarily be a question of fact whether in a given facts and circumstances, the expense is wholly and exclusively for business purposes or not. The view taken by the Assessing Officer and the Tribunal is a plausible view and, therefore, does not call for any interference by this Court.

9. Adverting to the judgment relied upon by learned counsel for the assessee, in **Sassoon J. David and Co. P. Ltd's case (supra)**, the appellant company was the investment company having shares either directly or through their nominees by Sir Percival David, Lady David and Mr. V.P. David (hereinafter collectively called as "Davids") Certain meetings of the Board of Directors were held on different dates. Finally, an agreement was entered into between the Davids and Tata Sons Limited on 23.3.1956 agreeing to sell 1000 shares held by Davids or their nominees in the company in favour of Tatas or their nominees for a sum of ₹ 155 lakhs. The said agreement, inter alia, provided that the sum voted by the company for payment of gratuities and/or as compensation for loss of employment to existing directors and employees of the company with respect to their service upto and inclusive of 31.3.1956 and a further amount of ₹ 16188/- payable to the Managing Director Mr. Mathalone, should be paid with respect to his services in accordance with the resolution by the company and the

amount so paid should be deducted towards price paid of ₹ 155 lakhs. During the Assessment year 1957-58, the relevant previous year being 1956, the company claimed deduction of ₹ 1,64,899/- before the Income Tax Officer, under Section 10(2)(xv) of the Income Tax Act, 1922. During each of the three succeeding assessment years, the company claimed deduction of ₹ 16,885/-, being annuity paid to the former Director in pursuance to the above resolution. During the assessment year 1957-58, the claim in respect of entire sum of ₹ 1,64,899/- was disallowed by the ITO on the ground that services of the Directors and employees had been terminated not because of the business expediency, but because of Tatas, purchaser of the shares, made it a condition precedent under the agreement. Aggrieved with the decision of the Income Tax Officer, the company filed an appeal, which was dismissed. Further appeals before the AAC, the Tribunal and before the High Court, filed by the company, were dismissed, upholding the decision of the Income Tax Officer. In the further appeal to the High Court, a Division Bench of the Bombay High Court found that out of ₹ 1,64,899/-, only a sum of ₹ 21,000/- paid towards liability for payment of pension to some retired employees and/or widows of such employees, besides a sum of ₹ 16,188/- paid to Managing Director in lieu of 6 months' notice that had given prior to the termination of services was not liable to claim deduction. The High Court was of the view that a sum of ₹ 1,27,511/- paid to the employees and Director of the company by way of retrenchment of compensation had been incurred by the company for personal expediency and/or consideration, accordingly, disallowed the claim of the company to that extent. Still dissatisfied, the company

approached the Apex Court, who held that as per the case of the company that many of its employees were old and superfluous and business could be carried out with a smaller number and the only way in which they could reduce the number was to terminate the services of all the employees by paying them compensation and, thereafter, re-employing some of them only. If the company felt that it was a method inure to its benefit, it cannot be said that payment of compensation would be referred as compensation or expediency. In these circumstances, the Apex Court allowed the appeal and ruled that remaining sum of ₹ 1,27,511/- was deductible under Section 10(2)(xv) of the Act during the assessment year 1957-58 and a sum of ₹ 16,885/- was allowable as deduction during the three succeeding assessment years, whereas, there are no circumstances, as discussed above, in the present case. The appellant has miserably failed to show any connection of the "foreign tours" of Mrs. and Mr. Deepak Aggarwal with the firm in connection with its business.

10. In **Aspinwall and Co.Ltd's case (supra)**, 'Foreign Travel' undertaken by the Senior Executive only for the purpose of business was held to be allowable deduction, whereas, there are no circumstances as such, because as discussed above, the appellant has failed to prove any nexus of the foreign tours of Smt. and Sh. Deepak Aggarwal with the business of the appellant firm.

11. In **Appolo Tyres Ltd's case (supra)**, the Hon'ble High Court allowed the deduction of expenditure on foreign travel of wife of Managing Director accompanying him on the foreign tour duly approved by the Directors on the ground that it was for assisting Managing

Director to discharge his social -cum-business obligations, whereas, Smt. and Sh. Deepak Aggarwal have no nexus or connection with the appellant firm in any capacity, whatsoever.

12. In **Sundaram Clayton Ltd's case (supra)**, visits of the Chairman and the Managing Director of the foreign company was held to be in the interest of the Indian company. In these circumstances, the same was allowed to be deducted as business expenditure, whereas, there are no such circumstances in the present case.

13. The principle of law enunciated in these pronouncements is well recognized. However, no benefit can be derived by the appellant from any of the said authorities referred to above being distinguishable on facts.

14. In view of the above, the substantial questions of law are answered accordingly any the instant appeal is dismissed.

**(RAMENDRA JAIN)**  
**JUDGE**

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

**28.8.2015**  
Ashwani/gbs