

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Appeal) No.929 of 2008

M/s.Aswathanarayana & Eswara,
67, Royapettah High Road,
Chennai-600 004. Appellant
-vs-

The Deputy Commissioner of Income-tax,
Business Range-I, Chennai. Respondent

Tax Case (Appeal) filed under Section 260A of the Income Tax, 1961 against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai dated 23.03.2007 in ITA No.1811/Mds/2004 for the assessment year 2001-02 against dated 26.05.2004 made in I.T.A. No. 38/04-05 on the file of the Commissioner of Income Tax(Appeals)VI Chennai 34 against the order dated 30.03.2004 made in PAN(GIR No. 21622-A on the file of the Deputy Commissioner of Income Tax, Business Range I, Chennai 34.

For Appellant :Mr.Vikaram Vijayaraghavan
For Respondent :Mr.D.Prabhu Mukunth Arunkumar

J U D G M E N T
[Delivered by T.S.Sivagnanam, J.]

This appeal by the assessee is questioning the correctness of the order passed by the Income Tax Appellate Tribunal (ITAT) Madras 'A' Bench in ITA No.1811/Mds/2004, dated 23.03.2007 for the assessment year 2001-02.

2.The assessee is a professional firm of Consulting Engineers & Architects. For the assessment year 2001-02, the appellant filed a return of income admitting loss of Rs.6,65,428/-. The assessment was completed under Section 143 (3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") determining the total assessed loss at Rs.4,20,588/-. The Assessing Officer disallowed a sum of Rs.2,65,588/- being foreign education and training expenses of partner Shri H.E.Sriprakash Shastry as being not related to the business of the firm and in doing so, followed the decision of this Court in

the case of M.Subramaniam Bros. vs. Commissioner of Income Tax reported in (2001) 250 ITR 0769 and the decision in Commissioner of Income Tax vs. R.K.K.R Steels reported in (2002) 258 ITR 0306.

3.The assessee contended that Mr.H.E.Sriprakash Shastry is the son of Shri.Eswara, one of the partners of the firm, who had completed his B.E.Civil Engineering in the year 2000 and became a partner of the firm in April 2000 and he was sent to the University of New South Wales, Sydney, Australia during February 2001 for specializing in construction management and upon completion of the higher education training, the said partner is continuing with the firm and specialized knowledge and training acquired by him in the field of Construction of Management is of immense benefit to the firm in its professional activities.

4.It is submitted that the higher studies and training, for which the expenditures were incurred, related to the professional activities of the firm and there is a direct nexus between the purpose for which the expenditures were incurred and the activities of the firm. The above contentions were advanced by the assessee before the Commissioner of Income Tax (Appeals)-VI [CIT(A)]. However, the same were rejected by order dated 26.05.2004, confirming the Assessing Officer's views. On further challenge to the said order before the ITAT, the assessee met with the same fate, as the appeal was dismissed by the impugned order dated 23.03.2007. Aggrieved over the same, the assessee is before this Court.

5.This appeal has been admitted on 09.07.2008, on the following substantial question of law:-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding the expenditure incurred towards foreign education and training expenses of a partner Shri H.E.SriprakashShastry, son of one of the partners Shri. Eswara, as personal in nature and hence not an allowable deduction?"

6.Heard Mr.Vikram Vijayaraghavan, learned counsel for the appellant and Mr.D.Prabhu Mukunth Arunkumar, learned Standing Counsel for the Revenue.

7.The learned Standing Counsel for the Revenue raised a preliminary objection stating that the question, which has been framed for consideration, is not a substantial question of law, but entirely factual.

8.By relying upon the decision of the Hon'ble First Bench of this Court in the case of Janardhanam Balaji vs. The Additional Commissioner of Income Tax, Kancheepuram Range

[MANU/TN/2522/2017], it is submitted that to be "substantial" a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case.

9. There can be no quarrel over the proposition that in an appeal filed under Section 260A of the Act, this Court cannot act as the third appellate authority over an order passed by the Tribunal. Therefore, what is to be considered by this Court is as to whether a substantial question of law arises for consideration.

10. At the first blush, the contention advanced by the learned Standing Counsel for the Revenue appears to be impressive. However, we find that on a closer scrutiny into the material papers, what is sought to be challenged before this Court is the perversity in the findings of the CIT(A) as well as the Tribunal by ignoring material facts, which have been placed before the Tribunal as well as before the CIT(A). Therefore, when the grounds canvassed by the assessee by placing materials before the Assessing Officer or for that matter before the CIT (A) were not taken into consideration, then it goes to the root of the matter thereby, the Court would be empowered to test the correctness of the impugned orders as to whether the order suffered from non-application of mind or failure to look into the material information placed before the authorities, which would amount to an error of law. Therefore, after hearing the learned counsel for the parties on the factual aspects, we find that this appeal is entertainable and a substantial question of law arises for consideration.

11. As pointed out earlier, the Assessing Officer as well as the CIT(A) as well as the Tribunal did not go into the factual aspects of the matter, though placed before them by the assessee. Two decisions of the Hon'ble Division Bench of this Court in R.K.K.R Steels (supra) and M.Subramaniam Bros. (supra) were relied on to support the disallowance. It has to be seen as to whether these two decisions can apply to the facts and circumstances of the case.

12. Insofar as M.Subramaniam Bros. (supra) is concerned, the son of the assessee, who went abroad, was initially admitted as a partner of the firm even when he was a minor and had a share of the benefits of the partnership, he attained majority in the year 1974 and did not take active part in the business of the firm, but continued his B.Com., studies and then completed M.Com. After completing his studies in India, he went abroad to do M.B.A. and he returned to India in the year 1979. Only after his return, he appears to have taken some part in the business activities of the firm. Taking note of the facts and circumstances of the case, the Court held that the expenditure

incurred by the assessee-firm on higher education abroad of one of its partners, who was the son of the main partner, was not allowable as deduction as this cannot be regarded as a deputation made by the firm in connection with the business notwithstanding a covenant by the said partner to serve the firm for a period of five years.

13. In the case of R.K.K.R Steels (supra), the facts were that the assessee was engaged in re-rolling and claimed expenditure for meeting the cost of travel to USA and the expenses connected with the education of the son of the Director of the company, who had acquired an M.B.A. Degree. There was no agreement between the company and son before he was sent to abroad. There was no requirement that he should join the company after completing his education. In the said facts and circumstances of the case, the Court held that the expenditure, which a father incurs out of his natural love and affection for his children in meeting the cost of their education, cannot become a business expenditure merely because he is also the owner or a director of a business in which the son of the daughter subsequently takes part.

14. In the instant case, we find that substantial factual material was placed before the Assessing Officer as well as before the CIT(A) and the Tribunal. To that extent, the learned counsel for the appellant has filed the copy of the written submissions filed before the CIT(A). From the facts placed, it is seen that the assessee's son has completed his B.E. degree in April 2000 and joined as a partner of the firm in the same month. All the partners of the firm, including Mr.H.E.Sriprakash Shastry, who are all qualified engineers, were having plans to take up work with multinationals, who were looking at India for setting up industries. Hence, the partners considered it a professional necessity to send Mr.H.E.Sriprakash Shastry to Australia to specialize in the field of construction management at the University of New South Wales. This specialization was directly connected with profession carried on by the assessee and he was sent to University of New South Wales in February 2001. The assessee firm stated that foreign higher education and training of one of their partners will have an advantage in obtaining professional assignments from industrial projects promoted with foreign collaboration.

15. Materials were placed before the authorities below that after the partner completed his studies and returned back to India several multinational contracts were acquired by the firm as well as much professional fee was earned by the firm. These facts and figures were placed before the Tribunal and the authorities as well. Unfortunately, the Assessing Officer did not deal with any of the factual position placed by the assessee firm, but was merely guided by the fact that it is the son of

one of the partners, who was sent for higher education abroad and there was no agreement between the firm and the partner that he should work for the firm after completion of the course. The assessing authority lost sight of the undisputed factual position that the partner had returned back to the firm and continued to work for the firm, even while the assessment proceedings were being dealt with. Therefore, there is genuinity and bonafide in the claim of the assessee.

16. Admittedly, the material placed by the assessee before the Tribunal shows that there were substantial pecuniary advantage earned on the partner acquiring a foreign degree thereby leading to contracts with multinationals some of whom have been named such as Nokia and Leighton (India) Private Limited, who appointed them as architects for the projects near Sriperumbudur. On this factual issue, it would be useful to refer to the decision in the case of Sakal Papers Pvt.Ltd. vs. Commissioner of Income Tax reported in (1978) 114 ITR 0256, wherein the educational expenditure of the daughter of its Directors were held to be deductible under Section 37 of the Act. Learned Standing Counsel for the Revenue pointed out that in the said case prior to the daughter being selected and sent for education abroad, for nearly 5 years she has worked as an apprentice in the firm.

17. In our considered view, the son of the partner had already been inducted as a partner of the firm before he was sent abroad, in the sense that prior to the son being sent to Australia for higher education, he had already been inducted as a partner and there is material to show that on his return, there has been value addition to the business of the firm and he continued with the firm as its partner.

18. The learned counsel for the assessee referred to the decision in the case of Commissioner of Income Tax vs. Kohinoor Paper Products reported in (1997) 226 ITR 0220 (M.P.).

19. In the said case, the Court after referring to Section 37 (1) of the Act held that the expenditure incurred in the training was held to be allowable deduction, as in the said case one Shri Deepak Bhargava was sent to U.S.A. for higher education, but it was obviously for business purposes of the assessee firm and he stayed abroad though for a long period, it is a fact that after completion of his studies, the aforesaid person kept himself engaged in the business of the firm and the experience gained by him proved beneficial to the firm.

20. The aforementioned two decisions, Sakal Papers Pvt.Ltd. (supra) and Kohinoor Paper Products (supra), are clear answers to the contentions advanced by the Revenue.

21.The learned Standing Counsel for the Revenue contended that in the decision in the case of Commissioner of Income Tax and Another vs. RAS Information Technologies (P) Ltd., reported in (2011) 200 taxman 305 (Kar), the material on record disclosed that the son of the Managing Director entered into an agreement with the assessee company, under which he agreed to work for the company on completion of his course abroad and even while pursuing his post-graduation course in manufacturing and engineering abroad for which financial assistance was provided, he kept the company updated about the latest trends and developments in the field and was also sending key inputs in the form of articles, research papers etc., to enable the company to keep itself updated of the technical know-how and knowledge.

22.As pointed out by us earlier, substantial facts were placed before the three authorities, who concurrently ignored the same, as there is no considerable or discussion on the same. In fact, the Tribunal did not even attempt to examine the said issue, in spite of specific grounds being raised by the assessee before the Tribunal that abundant material was placed before the Assessing Officer explaining the necessity of foreign education and training for professional firm and its usefulness for the firm after the partner completed specialized education and training and continued to serve the firm as a partner. Furthermore, the assessee specifically stated that the Assessing Officer and the CIT(A) did not choose to discuss any of them (materials placed), for the reasons best known to them. We are satisfied that there was substantial facts placed before the authorities, which were completely ignored.

23.As pointed out by the Hon'ble High Court of Delhi in Kostub Investment Ltd. vs. Deputy Commissioner of Income Tax [(2014) 365 ITR 0436 (Delhi)], there might be a tendency in business concerns to claim deductions under Section 37, and foist personal expenditure, but such a tendency itself cannot result in an unspoken bias against claims for funding higher education abroad of the employees of the concern.

24.We have examined the facts placed before the lower authorities and we find that the assessee is a partnership firm consisting of two brothers, two sons of one brother. All the four partners are duly qualified Engineers (B.E.) and the firm is carrying on Engineering Consultancy Profession for leading Indian Corporate Clients. One of the partner's son, Mr.H.E.Sriprakash Shastri, joined the firm in April 2000 after completing his B.E., degree. He had taken active part in the conduct of the business of the firm from the date of his induction as partner. Even while doing his B.E. Degree course, he is stated to have been attending the office of the firm and getting acquainted with reinforced concrete design, planning

estimates and construction management. After graduation, he was made a working partner of the firm and he has worked on several projects, which have been mentioned by the assessee. In February 2001, he was sent to Australia for higher education. The duration of the course and training is for a period of two semesters and the course underwent was directly related to the profession carried on by the firm and this accrued in favour of the firm, as could be seen from the facts placed before the CIT (A), where the professional fee received by the firm had substantially increased.

25. On return, after completion of the post graduate degree, the partner continued to work for the firm and materials were placed to show that several important contracts have been secured by the firm, which they attribute to the educational qualification and expertise acquired by the partner of the firm abroad. There was no material placed by the Revenue to demonstrate that any part or whole of the stand taken by the assessee was either false or untrue. Viewed from this angle, this Court is fully satisfied that this is not a case where there is a misuse of the provision of Section 37 of the Act to foist a personal expenditure as a business expenditure. Therefore, we are of the considered view that the expenditure was allowable and the authorities concurrently erred in not taking into consideration the factual position placed, in spite of specific grounds raised before the Tribunal, which would render the decision perverse.

26. The learned Standing Counsel for the Revenue pointed out that no ground has been raised by the assessee stating that the finding rendered by the Assessing Officer, CIT(A) and the Tribunal are perverse.

27. Perusal of the grounds of appeal filed before the CIT(A) shows that the assessee has specifically raised the point regarding non-consideration of the materials placed before the assessing authority. Yet the CIT(A) did not make an endeavour to examine the stand taken by the assessee, resulted in non-consideration of the materials placed. This undoubtedly would be perversity writ large on the face of the orders passed by the Assessing Officer and the CIT(A). Therefore, in our considered view, the assessee cannot be non-suited merely because, he has not used the expression "perverse" in the grounds of appeals before the CIT(A) as well as before the Tribunal. There is no dispute raised by the Revenue with regard to the factual position that the concerned partner went abroad for completion of the higher studies/education and on his return continued with the firm. Non-consideration of the factual issues, which are germane and which ought to have been considered, leads to perversity. Thus, the Tribunal committed serious error of law thereby vitiating the entire proceedings more particularly, the

aspects which goes to the root of the matter.

28.Thus, for the above reasons, we are of the considered view that the authorities concurrently committed serious error of law and failed to address the issues which ought to have been addressed, ignored materials which ought to have been considered and applied the decisions which are wholly distinguishable on facts.

29.In the result, the tax case appeal is allowed, the order passed by the tribunal is set aside and the substantial question of law is answered in favour of the assessee and against the Revenue. No costs.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

- 1.The Deputy Commissioner of Income-tax,
Business Range-I, Chennai.
- 2.The Income Tax Appellate Tribunal, "A" Bench,
Chennai.
- 3.The Commissioner of Income-tax (Appeals)-VI,
Chennai.

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GMI (CO)
SP(26/09/2018)

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