

Before Hon'ble S. S. Sodhi & G. C. Garg, J.

M/S DALMIA BISCUITS (P) LTD.,—Petitioner.

versus

THE COMMISSIONER OF INCOME-TAX, PATIALA,—Respondent.

Income Tax Reference 245 of 1980

January 27, 1992

Income Tax, Act, 1961—Ss. 37, 80vv and 256(1)—Allowable deductions—Expenses incurred on legal proceedings—Proviso to S. 80vv limiting deduction so as not to exceed in the aggregate Rs. 5,000—Words “any expenditure incurred by the assessee in the previous year” means total expenditure incurred during the previous year and not Rs. 5,000 in respect of each assessment year—Combined reading of Ss. 80vv and 37(1) shows that even bona-fide expenditure which would otherwise be deductible under section 37 has deliberately being kept down under section 80 vv to Rs. 5,000.

Held, that on a plain reading of the provisions of Section 80 VV of the Act, it will be seen that it merely limits the extent to which deductions would be permissible in respect of legal proceedings taken by the assessee with regard to tax penalty or interest, demanded or payable by him under the Act. Reading these provisions with the clear language of Section 37(1) of the Act, there can be no escape from the conclusion that even bona-fide expenditure which would otherwise be deductible under Section 37 of the Act, has deliberately being kept down under Section 80 vv of the Act to a maximum extent of Rs. 5,000.

(Para 7)

Further held, that the words “any expenditure incurred by the assessee in the previous year” cannot, but admit of the interpretation that this means the total expenditure incurred during the previous year and not Rs. 5,000 in respect of each assessment year.

(Para 8)

S. S. Mahajan, Advocate with Miss Aparna Mahajan and Pooja Sharma, for the Petitioner.

R. P. Sahwney, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The matter here concerns the extent of permissible deductions in respect of expenditure incurred by the assessee in connection with

proceedings before the relevant authorities under the Income Tax Act, 1961, or in Court, relating to determination of liability under the said Act, by way of tax, penalty or interest.

(2) The controversy raised pertains to the Assessment Year 1977-78.

(3) The points in issue, rest upon the interpretation of the provisions of Section 80 VV of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), which is in the following terms :—

"In computing the total income of an assessee, there shall be allowed by way of deduction any expenditure incurred by him in the previous year in respect of any proceedings before any Income Tax Authority or the Appellate Tribunal or any court relating to the determination of any liability under this Act, by way of tax, penalty or interest :

Provided, that no deduction under this Section shall, in any case, exceed in the aggregate five thousand rupees".

(4) The Income Tax Officer computed expenses incurred by the assessee on legal proceedings at Rs. 40,431. Having regard to the provisions of Section 80 VV of the Act, the allowable deduction under this Head was limited to Rs. 5,000. The assessee's claim for deduction, in respect of the remaining amount of Rs. 35,431 was accordingly disallowed. On appeal, the Appellate Assistant Commissioner, allowed a further deduction of Rs. 1,500 on the ground that this expenditure had been incurred for professional services relatable to accountancy matters. The Tribunal, on its part, up-held the disallowance of expenses incurred on legal proceedings to the extent of Rs. 33,931 and thereby approved what the Appellate Assistant Commissioner had done.

(5) On the legal issue raised, three questions have now been referred to this Court for its opinion. These being :—

1. Whether on the facts and in the circumstances of the case, the Tribunal was legally correct in holding that the provision of Section 80 VV of the Act necessarily exclude the allowance of *bona fide* expenditure of the nature specified in the said section even if such expenditure were incurred wholly and necessarily for the purpose of the assessee's business ?

2. Whether having regard to the facts that section 80 VV of the Act was brought on the statute with effect from 1st April, 1976, the Tribunal did not err in law in not excluding the expenditure referable to assessment years earlier than 1976-77 from the scope of the restrictions imposed by the said section ?
3. Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in rejecting the assessee's contentions that the limitation embedded in Section 80 VV of the Act is applicable separately to expenditure referable to proceedings for each assessment year and not to the total expenditure incurred during a single year irrespective of the number and nature of the proceedings ?”

A reading of the order of the Tribunal would show that the aspect of the expenses incurred by the assessee on legal proceedings being *bona fide* or necessary for his business had not been raised. No occasion is thus provided for any adjudication upon this matter. Question No. 1, has thus, to be returned unanswered.

(6) In dealing with the other two questions raised, besides, keeping in view the plain language of Section 80 VV of the Act, it is also pertinent to note that a consequential amendment had also been made in Section 37 of the Act, to provide that any expenditure of the nature described in Section 80 VV of the Act would not be allowed as a deduction under this Section namely, Section 37 of the Act.

(7) On a plain reading of the provisions of Section 80 VV of the Act, it will be seen that it merely limits the extent to which deductions would be permissible in respect of legal proceedings taken by the assessee with regard to tax penalty or interest, demanded or payable by him under the Act. Reading these provisions with the clear language of Section 37(1) of the Act, there can be no escape from the conclusion that even *bona fide* expenditure, which would otherwise be deductible under Section 37 of the Act, has deliberately being kept down under Section 80 VV of the Act to a maximum extent of Rs. 5,000.

(8) Further the words “any expenditure incurred by the assessee in the previous year” cannot, but admit of the interpretation that this means the total expenditure incurred during the previous year and not Rs. 5,000 in respect of each assessment year as was sought to be argued by the counsel for the assessee. A similar view has also

been expressed by the High Court of Calcutta in *Indian Oxygen Ltd. v. Commissioner of Income Tax* (1).

(9) In the result, questions (2) and (3) are hereby answered in favour of revenue and against the assessee. This reference is answered accordingly. There will, however, be no order as to costs.

R.N.R.

Before Hon'ble Ashok Bhan, J.

M/S GLAXO INDIA LIMITED AND ANOTHER,—*Petitioners.*

versus

M/S JALANDHAR FEED CORPORATION AND
ANOTHER,—*Respondents.*

Civil Revision No. 3242 of 1990.

February 22, 1992.

Code of Civil Procedure (V of 1908)—S. 115—Order 39—Rls. 1 and 2—Bank guarantee—Encashment—Injunction not to issue—Restraining defendant from encashing bank guarantee in absence of fraud or special equities—Non compliance of a term of guarantee bond gives right to defendant to invoke guarantee clause and banker is under absolute obligation to pay amount.

Held, that one of the conditions for invoking bank guarantee was that if the cheques issued by the plaintiffs are dishonoured then the defendants would be at liberty to invoke the bank guarantee and claim the amount due under the guarantee bond. Admittedly, in this case, three cheques of the plaintiffs were dishonoured and under the terms of the bank guarantee, the defendants were entitled to invoke the same and claim the money under the guarantee bond. The Courts below have not at all adverted to this fact while coming to the conclusion that there were special equities in favour of plaintiffs for preventing the encashment of the bank guarantee. I do not agree with the finding of the Courts below that it was either a case of fraud or special equities.

(Para 7)

Held, that since the plaintiffs acted in violation of the terms of the bank guarantee, no injunction, as prayed, could be granted in their favour.

(Para 8)