

view of the aforesaid Supreme Court decisions, the view taken by the Rajasthan High Court is correct and the view taken by the Gujarat High Court is not correct. Accordingly, we dissent from the view taken by the Gujarat High Court and in view of the decisions of the Supreme Court and Rajasthan High Court, we hold that the Income Tax Officer did not have the jurisdiction to proceed with the reassessment, the moment he found the two grounds mentioned in the reassessment notice incorrect or non-existent. Accordingly, we answer the referred question in favour of the assessee, in the affirmative, that the Tribunal was right in cancelling the re-assessment.

(10) Both the references stand disposed of in the aforesaid terms with no order as to costs.

P.C.G.

Before G. C. Mital & S. S. Sodhi, JJ.

THE ATLAS CYCLE INDUSTRIES LTD., SONEPAT,—Applicant.
versus
 THE COMMISSIONER OF INCOME-TAX, HARYANA,
 ROHTAK,—Respondent.

Income Tax Reference No. 56 of 1982.

May 9th, 1989.

Income Tax Act—1961—Section 32(1)(ii), Section 37(1) 37(2-B)—Expenses incurred by assessee in defending criminal proceedings under the Essential Commodities Act, 1955—Such legal expenses are allowable deductions.

Held, that the view of the Supreme Court in 23 I.T.R. 427 appears to be at variance with that of 91 I.T.R. 544 but what is pertinent to note here are the observations of the Supreme Court in the letter case to the effect that the earlier cases where it had been held that the expenditure incurred by the assessee to defend himself against a criminal charge, did not fall under Section 10(2)(xv) of the Income Tax Act, 1922, were decisions on their own facts. Applying the test laid down therein, it has to be held that the Tribunal was not justified in law in disallowing legal expenses incurred in connection with the criminal litigation pertaining to criminal conspiracy for commission of offence under the Essential Commodities Act, 1955.

(Para 8)

Reference under Section 256(1) of the Income Tax Act, 1961 by the Income Tax Appellate Tribunal, Delhi Bench 'E' New Delhi, to

The Atlas Cycle Industries Ltd. Sonapat v. The Commissioner of
Income-tax, Haryana, Rohtak (S. S. Sodhi, J.)

the Hon'ble High Court of Punjab and Haryana for opinion of the following questions of law arising out of the Tribunal's order dated 29th August, 1970 in R.A. No. 1283 (Del.)/1980 in ITA No. 350 (Chandi./1979), Asstt. Year 1974-75:—

1. *Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that depreciation under Section 32(1)(ii) of the Income-tax Act was not admissible in respect of the building of Ram Mandir ?*
2. *Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure of Rs. 6,000 disbursed for being incurred on maintenance of Ram Mandir was not allowable under section 37(1) of the Income-tax Act ?*
3. *Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the expenses items of Rs. 2,514, Rs. 24,801, Rs. 2,378, and Rs. 838 were hit by the provisions of Section 37(2-B) of the Income-tax Act ?*
4. *Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in disallowing legal expenses amounting to Rs. 7,243 incurred in connection with the criminal litigation pertaining to criminal conspiracy for commission of offence under Essential Commodities Act, 1955 ?*

D. K. Monga, Advocate of Delhi with Rajiv Bhalla, Advocate, for the Applicant.

Ashok Bhan, Sr. Advocate with Ajay Mittal, Advocate, for the Respondent.

JUDGMENT

S. S. Sodhi, J.

(1) The reference here pertains to the following questions:—

- (1) *Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that depreciation under Section 31(1) (ii) of the Income Tax Act was not admissible in respect of the building of Ram Mandir ?*

-
- (2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure of Rs. 6,000 disbursed for being incurred on maintenance of Ram Mandir, was not allowable under Section 37(i) of the Income Tax Act ?
- (3) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the expense items of Rs. 2,514, Rs. 24,801, Rs. 2,378 and Rs. 838 were hit by the provisions of Section 37 (2B) of the Income Tax Act ?
- (4) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in disallowing legal expenses amounting to Rs. 7,243 incurred in connection with the criminal litigation pertaining to criminal conspiracy for commission of offence under Essential Commodities Act, 1955 ?”

(2) The answer to first two questions has to be in the negative in favour of the assessee and against revenue keeping in view the earlier judgment of this Court in *Atlas Cycle Industries Ltd. v. Commissioner of Income Tax, Patiala* (1), pertaining to the same assessee for the earlier years.

(3) As regards question No. (3), which concerns expenditure incurred on entertainment, the matter is covered by the decision of our Full Bench in *Commissioner of Income Tax, Amritsar-II, v. Khem Chand Bahadur Chand* (2), where it was held that all hospitality extended wholly or exclusively for the purposes of business, whether lavish or frugal, comes within the ambit of the phrase in the nature of entertainment expenditure' and is consequently subject to the ceiling limits prescribed in clauses (i) to (iv) of Sections 37 (2-A) of the Income Tax Act, 1961. This question has thus to be answered in the affirmative in favour of revenue and against the assessee.

(4) Turning now to the last question posed, namely; question No. 4, this pertains to legal expenses incurred by the assessee in connection with criminal litigation against the assessee under the

(1) (1982) 134 I.T.R. 458.

(2) (1981) 131 I.T.R. 336.

The Atlas Cycle Industries Ltd. Sonapat v. The Commissioner of Income-tax, Haryana, Rohtak (S. S. Sodhi, J.)

Essential Commodities Act, 1955. In dealing with this matter, it would be pertinent to advert to the judgment of the Supreme Court in *Commissioner of Income Tax, Andhra Pradesh v. Dhanrajgirji Raja Narasingirji* (3), where it was observed, "In our opinion, it makes no difference whether the proceedings are civil or criminal. All that the court has to see is whether the legal expenses were incurred by the assessee in his character as a trader, in other words, whether the transaction in respect of which proceedings are taken arose out of and was incidental to the assessee's business. Further, we have to see whether the expenditure in question was *bona fide* incurred wholly and exclusively for the purpose of business".

(5) Next to the note is the judgment of our Court in *J. N. Singh and Co. Private Ltd. v. Commissioner of Income-Tax, New Delhi* (4), where it was held, that 'Expenses incurred in defending an employee against a criminal prosecution with regard to a transaction carried out in the ordinary course of business of the assessee can be allowed as a permissible deduction'. Such an expenditure, 'it was said,' would be incurred to protect the good name of the business, the prosecution having emanated with regard to an act which took place in the ordinary course of business and the expenditure would thus be wholly and exclusively for the purpose of the business.

(6) The other judicial precedents in favour of the assessee being; *Rohtas Industries Ltd. v. Commissioner of Income Tax, Bihar and Orissa* (5), *Lakshmiji Sugar Mills Co. (P) Ltd. v. Commissioner of Income Tax, Delhi* (6), and *Commissioner of Income Tax v. Ahmedabad Controlled Iron and Steel Reg. Stock-Holders Association Pvt. Ltd* (7).

(7) Mr. Ashok Bhan, Senior Advocate, appearing for Revenue, on the other hand, sought to rely upon the judgment of the Supreme Court in *Commissioner of Income Tax West Bengal v. H. Hirjee* (8).

(3) (1973) 91 I.T.R. 544.

(4) (1966) 60 I.T.R. 732.

(5) (1968) 67 I.T.R. 361.

(6) (1975) 98 I.T.R. 568.

(7) (1975) 99 I.T.R. 567.

(8) (1953) 23 I.T.R. 427.

This was a case pertaining to the prosecution of the assessee under Section 13 of the Hoarding and Profiteering Ordinance, 1943, on a charge of selling goods at prices higher than what was reasonable in contravention of the provisions of Section 6 thereof. The prosecution ended in acquittal. It was held that, in the circumstances of the case, the sum spent in defending the criminal proceedings was not an expenditure laid out or expended wholly and exclusively for the purpose of the business and it was, therefore, not an allowable deduction under Section 10(2) (xv) of the Income Tax Act, 1922.

(8) It will be seen that the view of the Supreme Court in *H. Hirjee's case* (supra) appears to be at variance with that of *Dhanrajgirji Raja Narasingirji's case* (supra), but, what is pertinent to note here are the observations of the Supreme Court in the latter case to the effect that the earlier cases where it had been held that the expenditure incurred by the assessee to defend himself against a criminal charge, did not fall under Section 10 (2) (xv) of the Income Tax Act, 1922, were decisions on their own facts. *Dhanrajgirji Raja Narasingirji's case* (supra) is thus what holds the filed. Applying the test laid down therein, question No. (4) has clearly to be answered in the negative in favour of the assessee and against revenue.

(9) This reference is disposed of accordingly. There will, however, be no order as to costs.

R.N.R.

Before : G. R. Majithia, J.

KIRPAL SINGH AND SMT. SIMAR KAUR AND ANOTHER,
—Petitioner.

versus

THE SUTLEJ LAND FINANCE PVT. LTD. SUTLEJ MARKET,
THROUGH ITS MANAGING DIRECTOR AND OTHERS,
—Respondents.

Company Petition No. 85 of 1985.

May 24th, 1989.

Companies Act, Ss. 433, 434, 439—Petition for winding up—Company making the payment of entire debt to petitioners—Fresh creditors filing Civil Misc. Application in same petition—No notice served by fresh Creditors—Application filed after claim becoming time barred—Legality of such claim.