respondent to defend himself. In passing I may mention that this grievance was also sought to be agitated before the trial Court, and which after consideration was categorically rejected. The reasoning of the trial Court is unexceptionable and I find that the appellate Court misdirected itself in reversing that finding. Accordingly this finding of the first appellate Court is hereby set aside.

(19) No other point has been raised on behalf of the respondent. As both the contentions of the appellant are meritorious, the appeal succeeds and is hereby allowed. The suit of the respondent shall stand dismissed. However, there will be no order as to costs.

K.T.S.

CIVIL MISCELLANEOUS

Before O. Chinnappa Reddy Acting C. J. and M. R. Sharma, J.

THE COMMISSIONER OF INCOME TAX, AMRITSAR,—*Appellant.*

versus

M/S. GHERU LAL BAL CHAND, ABOHAR,—*Respondent.*

Income Tax Reference Nos. 96 and 97 of 1974.

October 28, 1976.

Income Tax Act (XLIII of 1961)—Sections 2(24) and 37(2A)—Meals served to an assessee's constituents—Expenses incurred on running a kitchen therefor—Whether "in the nature of entertainment expenditure"—Limits laid down in section 37(2A)—Whether applicable—Receipts on account of Gaushala and Dharmada—Whether constitute income.

Held, that the words "in the nature of entertainment expenditure" in section 37(2A) of the Income Tax Act 1961 are of wide import and embrace in their ambit an expenditure which may be similar to entertainment expenditure, even though it does not strictly fall within the meaning of this expression. The reason is obvious. The legislature intended to curb the expenditure of providing hospitality of any kind at the cost of public exchequer. Even if it is regarded that according to strict dictionary meaning of the word "entertainment" the kitchen expenses incurred by an assessee do

not fall within the meaning of the words "entertainment expenditure", the expenses incurred are certainly "in the nature of entertainment expenditure" and can be allowed only upto a limit provided in that section. (Paras 5, 6 and 8).

Held, that income tax is a levy on income and if the income does not result at all, there cannot be a tax. Receipts on account of Gaushala and Dharmada under custom have to be spent on charities and if an assessee spends bulk of the amount during an assessment year for the purpose for which it was received, such receipts do not constitute income within the meaning of section 2(24) of the Act.

(Para 11).

Reference under Section 256(1) *of the Income Tax Act*, 1961, *made by the Income tax Appellate Tribunal (Chandigarh Bench) Chandigarh referred the case to the Hon'ble High Court of Punjab and Haryana at Chandigarh, for opinion on the following questions of law, arising out of I.T.A. Nos.* 434 *and* 479 *of* 1972-73 *dated* 31*st January*, 1974 *for the assessment year* 1969-1970.

"1. *Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the limits laid down under section* 37(2*A*) *of the Income Tax Act were not applicable to the expenses incurred on the running of the kitchen for serving the meals to the assessee's constituents* ?

2 *Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the receipts of Rs.* 22,518 *and Rs.* 15,545 *on account of Gaushala* and *Dharmada respectively did not constitute in the hands of the assessee income within the meaning of section* 2(24) *of the Income tax Act* ?"

D. N. Awasthy, Advocate with B. K. Jhingan, Advocate, *for the Petitioner.*

Nand Lal Dhingra, Advocate, *for the Respondent.*

JUDGMENT

M. R. Sharma, J. —The assessee is a registered firm consisting of four partners with equal shares in the profits and losses of the firm. The main sources of income of the firm are interest and income from commission agency. It deals in foodgrains, cotton seeds and other commodities of the like nature. The firm carried on business at Abohar, Hissar and Malaut under three different names. For the assessment year 1969-70, the Income tax Officer assessed the firm on

a total income of Rs. 4,42,893 as against the returned income of Rs. 3,69,316. The assessee had claimed an allowance of Rs. 28,342, on account of expenditure incurred for maintaining a kitchen each at Abohar, Hissar and Malaut for serving meals to the constituents. The Income tax Officer, acting under section 37(2-A) of the Income tax Act, 1961 (hereinafter referred to as the Act) divided the period covered by the relevant previous year in two parts and allowed Rs. 4,071 for the period from May 22, 1967 to September 30, 1967, and Rs. 1,662 for the period from October 1, 1967 to May 28, 1968. In all, an allowance of Rs. 5,733 was made and the balance amount of Rs. 22,609 was disallowed.

(2) The assessee also collected Rs. 38,063 which consisted of two items:—

(i) Rs. 22,518 received in Gaushala account.

(ii) Rs. 15,545 received in Dharmada account.

The Income-tax Officer also added back this amount of Rs. 38,063 towards the income of the assessee.

(3) On appeal, the Appellate Assistant Commissioner reduced the disallowance of kitchen expenses to Rs. 20,841 and gave full allowance for the sum of Rs. 38,063 received by the assessee in Gaushala and Dharmada accounts on the strength of the judgment rendered by the Allahabad High Court in *Bijli Cotton Mills Ltd.* v. *Commissioner of Income Tax* (1), and held that this amount did not represent the income of the assessee.

(4) The revenue went up in appeal to contest the non-addition of Rs. 38,063, towards the income of the assessee and the assessee filed an appeal about the disallowance of Rs. 20,841 as kitchen expenses before the Income-tax Appellate Tribunal, Chandigarh Bench. The appeal filed by the revenue was dismissed and the one filed by the assessee was allowed.

(1) (1970) 76 I.T.R. 194.

(5) At the instance of the Commissioner of Income-tax, Amritsar, the Appellate Tribunal has referred to us the following two questions of law for our opinion:—

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the limits laid down under section 37(2A) of the Income-tax Act were not applicable to the expenses incurred on the running of the kitchen for serving the meals to the assessee's constituents?

2. Whether, on the facts and in the circumstances of the case, the Tribiunal was right in holding that the receipts of Rs. 22,518 and Rs. 15,545 on account of Gaushala and Dharmada, respectively, did not constitute in hands of the assessee income within the meaning of section 2(24) of the Income tax Act ?"

Section 37 of the Act lays down that certain types of expenditure incurred in connection with business or profession would be allowed in computing the income chargeable under the head "Profits and gains of business or profession". Sub-section (2A) of this section allows an assessee to incur expenditure for entertainments proportionate to his income and its material portion reads as under :—

"Notwithstanding anything contained in sub-section (1) or sub-section (2), no allowance shall be made in respect of so much of the expenditure in the nature of entertainment expenditure incurred by any assessee during any previous year which expires after the 30th day of September, 1967, as is in excess of the aggregate amount computed as hereunder :—

* * *."

I think the key to the interpretation of this section is provided by the words "in the nature of entertainment expenditure". These words are of wide import and embrace in their ambit an expenditure which may be similar to entertainment expenditure, even though it does not strictly fall within the meaning of this expression. The reason is obvious, because the legislature intended to curb the expenditure of providing hospitality of any kind at the cost of public

exchequer. When a matter like this is covered by an express statutory provision, it is not open to me to devise any rule of custom which may defeat the clear intent of the legislature. Admittedly, the assessee has spent this amount on providing food to his customers and farmers who bring agricultural produce at his place of business. The word "entertainment" has been defined in the Compact Edition of the Oxford English Dictionary, Volume I as "the act or practice of being hospitable; the reception and entertainment of guests visitors or strangers with liberality and goodwill." In the New Webster Encyclopedic Dictionary of the English Language, this word has been given the meaning to "include the act of entertaining; the receiving and accommodating of guests; food, lodging, or other things required by a guest; a hospitable repast : the pleasure which the mind receives from anything interesting and which holds or arrests the attention: that which entertains; that which serves for amusement, as a dramatic or other performance, reception, admission."

(6) Even if it is regarded that according to strict dictionary meaning of the word "entertainment" the kitchen expenses incurred by the assessee do not fall within the meaning of the words "entertainment expenditure", the expenses incurred are certainly "in the nature of entertainment expenditure".

(7) An argument is raised on behalf of the assessee-firm that it provides only simple meals which can by no means be regarded as lavish, and that due emphasis should be placed on the dictionary meaning of the word "entertainment" which says that the meal should be formal or elegent meal. In this respect, I might add that dictionaries are used as an aid to one's memory and the meaning assigned by them to a particular word cannot always be accepted for interpreting that word when it appears in a statutory provision. The Court has to consider the context and the background in which the legislature employs a word. Furthermore, something which may be regarded as an ordinary meal by a fastidious person may really be regarded as a lavish meal by a common man. Such considerations which introduce an element of uncertainty in the meaning of a phrase used in a statute have to be avoided at all cost.

(8) In *Brij Raman Dass and Sons* v. *Commissioner of Income tax, Lucknow,* (2), a Division Bench of the Allahabad High Court held that

(2) 104 I.T.R. 541.

expenditure incurred for providing tea, *lassi, jalpan,* etc. to customers will be governed by section 37(2A) of the Act and can be allowed only upto a limit provided in that section. I am in respectful agreement with the view taken in that case.

(9) On behalf of the assessee reliance has been placed on *Commissioner of Income tax, Gujarat-II. Ahmedabad* v. *Patel Brothers and Co., Bardoli and another,* (3), decided by a Division Bench of Gujarat High Court, who took a contrary view. With utmost respect to the learned Judges who decided that case, I would like to observe that they have not attached due weight to the words "in the nature of" appearing before the words "entertainment expenditure" and the view taken by them cannot be regarded as good law.

(10) For the reasons afore-mentioned, I would answer the first question in favour of the revenue and against the assessee.

(11) Regarding Gaushala and Dharmada receipts of the assessee-firm, it may be said that this amount under custom had to be spent on charities. The assessee was acting merely as a trustee and in fact did spend bulk of the amount during the assessment year for the purpose for which it was received. In *Thakur Das Shyam Sunder* v. *Additional Commissioner of Income tax, U.P.,* (4), it was held by a Full Bench of the Allahabad High Court that income tax is a levy on income and if the income does not result at all, there cannot be a tax. The receipts of the assessee in that case in Dharmada account, which was held by him to be utilised specifically and exclusively for charitable purposes, were held not to constitute the income of the assessee. I am in respectful agreement with this view and for that reason, answer the second question against the revenue and in favour of the assessee.

(12) In view of the divided success of the parties, there would be no order as to costs.

N. K. S.

(3) (1976)1 Income Tax Journal 31.

(4) 93 I.T.R. 27.