



THE HIGH COURT OF DELHI AT NEW DELHI

ITA 283/2004

Judgment delivered on 08.11.2004

M/S GKN DRIVELINE (INDIA) LTD

...Appellant

- versus -

COMMISSIONER OF INCOME-TAX, DELHI IV ...Respondents

Advocates who appeared in this case:

For the Appellant : Mr V.P. Gupta

For the Respondents : Mr R.D. Jolly with Mr S.C. Sharma

CORAM:-

HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE
HON'BLE MR JUSTICE BADAR DURREZ AHMED

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

B.C. PATEL, CJ

1. At the instance of the assessee, the following question has been raised before this Court as a substantial question of law in an appeal under section 260A of the Income-Tax Act, 1961 [hereinafter referred to as 'the Act']:-

"Whether the Tribunal was right in law in holding that



expenditure of Rs.3,07,167/- incurred by appellant on payment of rent in respect of accommodation maintained by appellant as transit house was not allowable under Section 37 (4) of the Act without appreciating that rent is duly allowable in computation of business income as per special provision of section 30 of the Act?"

2. For the assessment year 1996-97, the Assessing Officer did not allow the amount paid by way of rent for guest-house against which order the appeal was preferred before the Commissioner of Income-Tax (Appeals). The appellate authority, after considering various decisions, held that in view of the provisions contained in Section 30 read with Section 37 (4) of the Act, the benefit cannot be extended to the assessee. Against the said order an appeal was preferred before the Income-Tax Appellate Tribunal being ITA No.388/Del/2000 and the views of the CIT (Appeals) were confirmed.

3. There is no dispute that the amount of Rs.3,07,167/- was paid by way of rent only and there is no dispute that the accommodation was used as a guest-house. Section 30 of the Act as well as Section 37 of the Act being relevant, we think it proper to reproduce the relevant portions of both the sections as applicable in the year under reference as under:-

'Rent, rates, taxes, repairs and insurance for buildings.

30. In respect of rent, rates, taxes, repairs and insurance for premises used for the purposes of the



business or profession, the following deductions shall be allowed--

- (a) where the premises are occupied by the assessee--
 - (i) as a tenant, the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;
 - (ii) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises;
- (b) any sums paid on account of land revenue, local rates or municipal taxes;
- (c) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises."

"General

37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

[*Explanation.*—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is in offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.] an



(2) XXXXX XXXXX XXXXX XXXXX

(3) Notwithstanding anything contained in sub-section (1), any expenditure incurred by an assessee after the 31st day of March, 1964, on advertisement or on maintenance of any residential accommodation including any accommodation in the nature of a guest-house or in connection with travelling by an employee or any other person (including hotel expenses or allowances paid in connection with such travelling) shall be allowed only to the extent, and subject to such conditions, if any, as may be prescribed.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (3),—

(i) no allowance shall be made in respect of any expenditure incurred by the assessee after the 28th day of February, 1970, on the maintenance of any residential accommodation in the nature of a guest-house (such residential accommodation being hereafter in this sub-section referred to as "guest-house");

(ii) in relation to the assessment year commencing on the 1st day of April, 1971, or any subsequent assessment year, no allowance shall be made in respect of depreciation of any building used as a guest-house or depreciation of any assets in a guest-house:

Provided that the aggregate of the expenditure referred to in clause (i) and the amount of any depreciation referred to in clause (ii) shall, for the purposes of this sub-section, be reduced by the amount, if any, received from persons using the guest house:

Provided further that nothing in this sub-section



shall apply in relation to any guest house maintained as a holiday home if such guest house-

- (a) is maintained by an assessee who has throughout the previous year employed not less than one hundred whole time employees in a business or profession carried on by him; and
- (b) is intended for the exclusive use of such employees while on leave.

Explanation - For the purposes of this sub-section-

- (i) residential accommodation in the nature of a guest house shall include accommodation hired or reserved by the assessee in a hotel for a period exceeding one hundred and eighty two days during the previous year; and
- (ii) the expenditure incurred on the maintenance of a guest house shall, in a case where the residential accommodation has been hired by the assessee, include also the rent paid in respect of such accommodation.

(5) For removal of doubts, it is hereby declared that any accommodation, by whatever name called, maintained, hired, reserved or otherwise arranged by the assessee for the purpose of providing lodging or boarding and lodging to any person (including any employee or, where the assessee is a company, also any director of, or the holder of any other office in, the company), on tour or visit to the place at which such accommodation is situated, is accommodation in the nature of a guest-house within the meaning of sub-section (4).

4. Section 30, which is in Chapter-IV for 'Computation of Business Income', refers to rent in respect of premises used for the



purpose of business or profession. What deductions are to be allowed are indicated in sub-clauses (a), (b) and (c). Reading sub-clause (a), it is clear that it is in two parts. One part refers to rent paid for premises as a tenant and the second part of sub-clause (i) of clause (a) refers to cost of repairs.

5. So far as Section 37 is concerned, it is clear that it is in the nature of a special provision. Section 30 refers to allowable deduction including rent paid for premises occupied by the assessee for business. Sub-Section 4 of Section 37 specifically makes a provision for rent for a guest house as disallowable deduction. Sub-Section 4 states that no allowance shall be made in respect of any expenditure incurred on the maintenance of any residential accommodation in the nature of a guest-house. Sub-Clause (ii) of Sub-Section 4 refers to depreciation of any building used as a guest-house or depreciation of any assets in the guest-house. Therefore, it is clear that sub-clause (i) of Sub-Section 4 may be available in two situations; the person may be the owner of a guest-house or even if he is not the owner of the guest-house, he might have spent money for maintenance. So far as sub-clause (ii) of Sub-Section 4 of Section 37 is concerned, it is very clear that the same will apply only to the owner of a guest-house who maintains for the purpose indicated in the Section, i.e., to accommodate his guests. Or where residential

A handwritten signature or initials, possibly 'R/S', written in black ink.



accommodation is hired by the assessee which includes rent in respect of such accommodation. (This is in view of explanation). Thus this is a special Provision.

6. In the instant case, it is accepted that the premises in question was used as a guest-house. Sub-Section 5 is for the removal of doubts as to whether the premises is a guest-house or not.

7. On behalf of the revenue, it was submitted that in view of non-obstante clause in sub-section (4) of section 37, the court has to examine whether the Legislature made the provision having no utility? It was submitted that in view of the explanation to sub-section (4) of Section 37 no allowance is required to be made on the maintenance of any residential accommodation in the nature of guest house or no allowance shall be made in respect of depreciation of any building used as a guest house or depreciation on any asset in a guest house or no allowance shall be allowed where residential accommodation is hired by the assessee, which includes rent in respect of such accommodation.

8. On behalf of the revenue, it was submitted that in view of Sub-Section 5 of Section 37 even if the premises is maintained, hired, reserved or otherwise arranged by the assessee for the purpose of providing lodging or boarding to any person on tour or visit to the place to which



such accommodation is situated, it is a guest-house and as it is on payment of rent, it will not be considered as allowable deduction. For this purpose, reliance is placed on a decision of the Kerala High Court in the case of United Catalysts India Ltd v. Commissioner of Income-Tax: 229 ITR 233 as also on the decision reported in the case of Britannia Industries Ltd. v. Commissioner of Income-Tax and Another: 257 ITR 681 (Calcutta) and in the case of Commissioner of Income-Tax v. Instrumentation Ltd: 258 ITR 513 (Rajasthan). In 229 ITR at page 233 question No.2 is almost similar and the same is discussed at page 237. The Court pointed out that it cannot be contended that in spite of the above provisions specifically relating to the guest-house, the assessee can still put forward his claim under the general provisions of Section 30. It is in view of this, the claim made by the assessee was negated. The Calcutta High Court has similarly expressed its views in 257 ITR 681 at page 686. There also, the Court pointed out that when a specific section already exists, the general Section 30 would not apply in view of the special provisions contained in Section 37 (4).

9. As against this, it was pointed out by the learned counsel for the assessee that a Full Bench of the Kerala High Court in the case of Commissioner of Income-Tax v. Travancore Cements Ltd: 240 ITR 816



had an occasion to examine the scheme and at 821 the Court considered the general provisions as well as the special provision. The Court pointed out that Section 37 is "general" provision regarding the expenditure not covered by Sections 30 to 36 and Section 80 VV and not being in the nature of capital expenditure or personal expenses of the assessee. The Court further pointed out as under:-

"...On going through the above provisions, it is clear that the expenditure covered by all the sub-sections of section 37 are items of expenditure not covered by sections 30 to 36. Hence, the items of expenditure covered by sections 30 to 36 are different from the items of expenditure covered by the different sub-sections of section 37. The above circumstances also would make it clear that the non-obstante clause in section 37 (3A) applies only to those of the items covered by section 37 (1) and it cannot have any overriding effect in respect of the other provisions pertaining to the allowances of expenditure under sections 30 to 36 of the Act."

10. We are required to examine the language used in Sub-Section 4 of Section 37 and the explanation thereto which specifically refers to expenditure incurred by the assessee on the maintenance of any residential accommodation in the nature of a guest-house including rent.

11. On behalf of the assessee reliance was placed on 259 ITR 107 and the decision of Kerala High Court reported in 223 ITR 203. According to the learned counsel for the assessee no word is to be added or substituted while considering the provisions of sub-section (4) of



Section 37 as overriding Section 30 of the Act. It was also submitted that when the language of the section is clear and gives only one meaning, the same is to be adopted irrespective of consequences. Reliance is placed by the assessee on 105 ITR 92. Section 37 (1) states that any expenditure laid out or expended wholly and exclusively for the purposes of business or profession shall be allowed in computing the income chargeable under the head "profits and gains of business or profession". However, sub-Section 4 of Section 37 starts with a non-obstante clause. Hence, Sub-Section (1) of Section 37 is not to be read in a case where Sub-Section (4) of Section 37 is attracted. And, therefore, under sub-Section (4) of Section 37, which specifically refers to rent for guest house, rent is not an allowable expenditure for a guest house.

12. What is important to note is the Explanation to sub-Section (4) of Section 37. This sub-Section in view of the non-obstante clause is to be read independently. By reading sub-Section (4) of Section 37, it is clear that legislature made a specific provision for disallowing rent paid in respect of accommodation, i.e., transit house. Thus, amount towards expenditure incurred on the maintenance of guest house which includes rent paid in respect of such accommodation which is specifically referred to in sub-Section (4) of Section 37 being specific in nature must override



the general provision.

13. Accordingly, we answer the question in favour of revenue and against the assessee.

B. Ahmed
CHIEF JUSTICE

B. Ahmed
BADAR DURREZ AHMED, J

November 08, 2004
sd

ITA283.04.sxw//jinaV/