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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24.01.2014
Pronounced on: 25.02.2014

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ITA 10/2014

M/S. KOSTUB INVESTMENT LTD. Appellant
Through: Ms. Prem Lata Bansal, Sr.
Advocate with Sh. Ram Avtar Bansal and
Sh. Naman Nayak, Advocates.

versus

COMMISSIONER OF INCOME TAX Respondent
Through: Sh. Sanjeev Sabharwal, Sr.
Standing Counsel with Sh. Ruchir Bhatia, Jr.
Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE RAJIV SHAKDHER

MR. JUSTICE S.RAVINDRA BHAT

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1. The present appeal is directed against an order of the Income Tax Appellate Tribunal ("ITAT") dated 09.01.2012, and involves decisions on the following question of law framed at the time of admission:



“Did the Tribunal fall into error of law in holding that the appellant’s claim that the amount has been spent during the Assessment Year 2006-07, for the higher education of Sh. Dushyant Poddar, a son of its Director, was not liable as “business expenditure” under Section 37 of the Income Tax Act?”

2. For the year under consideration, the appellant company (hereinafter referred to as assessee) filed its return declaring loss at ₹2,08,72,440/- under the normal provisions and book profit at ₹1,35,42,270/- under Section 115JB of the Income Tax Act, 1961 (“the Act”), on 24.11.2006. In the Profit and Loss Account annexed to the return of income, assessee had claimed a sum of ₹23,16,942/- as expenses incurred under the head “*Education & Training Expenses*”. These expenses had been incurred by the assessee on higher education of Shri Dushyant Poddar, an employee of the company, who happens to be the son of the Directors Shri Lalit Poddar and Smt Saroj Poddar, for undertaking an MBA Course in the U.K.

3. During the assessment proceeding, the Assessing Officer (“AO”) required the assessee to justify its claim with respect to the said expenses. The assessee produced the extract from the minutes of the meeting of the Board of Directors dated 10.02.2005 in which decision was taken to send Dushyant Poddar for further study in U.K. and also the Employment Bond entered into with him. The assessee explained to the AO that Dushyant Poddar was a Graduate having completed his B.Com (H) from Delhi University and working with it (i.e. the assessee) for a salary of ₹10,000/- p.m. Since he was a brilliant student and the company was in need of Manager (Marketing)



who could study the mood of the investment market and the prospects taking into consideration the economy of India and other advanced countries and an individual who could also take decisions with respect to investment in shares and securities, the Board of Directors in the meeting held on 10.02.2005 took a conscious decision to send Dushyant Poddar for pursuing the course of MBA from U.K. and to incur the expenditure up to the extent of ₹30 lakhs on his study and training.

4. The assessee also stated in the resolution that on coming back to India after completion of the studies, Dushyant Poddar will serve the assessee company at least for 5 years on a remuneration as mutually agreed with the Board of Directors subject to minimum of ₹10,000/- and maximum of ₹25,000/- p.m. The assessee relied on a resolution of the Board of Directors to say that in the event of breach of bond, suitable action for recovery of the amount would be taken against Dushyant Poddar. He also furnished the bond, as required. Eventually, Dushyant Poddar was sent to U.K. for further study. The assessee incurred an expenditure of ₹23,16,942/- during the year under consideration.

5. The AO in his order refused to accept the assessee's contentions and rejected the argument that the sum of ₹23,16,942/- could be claimed as a deduction under Section 37 of the Act. Aggrieved by this disallowance, the assessee carried the matter in appeal. The CIT (Appeals) upheld the disallowance in the appellate proceedings. The CIT examined the bond furnished by Dushyant Poddar and observed that it was on plain paper and the other query – as to what was the



employee's response to the University's query with respect to funding for education – remained unanswered. The CIT (Appeals) also was influenced by the fact that the bond was executed on 01.04.2005 after Dushyant Poddar had been selected for completing his MBA from the U.K. University. In view of these reasons, the assessee's appeal was rejected. The further appeal to the ITAT was dismissed by the impugned order. In the impugned order, the ITAT relied upon the reasoning of the previous decision of this Court in *Natco Exports Pvt. Ltd. v. CIT*, 2012 (345) ITR 188, particularly the observations that while claiming such deductions, a distinction has to be made between personal expenditure and that which is incurred for the purpose of business. The ITAT's view – that in the absence of any policy in the company to fund the higher education – the applicant's aspirations can be believed, except in the case of benefit accruing to Dushyant Poddar, the son of a Director. In these circumstances, the disallowance was upheld.

6. In support of the appeal, the assessee argues that the requirement spelt out in *Natco Exports* (supra) has to be seen contextually. In that case, the course opted for by the employee – daughter of a Director – had no relation with the assessee's business. She, unlike Dushyant Poddar, had not taken-up employment with the assessee company and had chosen to apply for higher educational studies directly from the University. It was in the context of such facts that the decision in *Natco Exports* (supra) was rendered. Learned counsel relied upon a judgment of the Bombay High Court in *Sakal Papers Private Limited v. Commissioner of Income Tax*, 1978 (114)



ITR 256 for the proposition that even in the absence of commitment or contract or bond, an expenditure which is otherwise proper cannot be disallowed to the company, especially when it can result in the trainee securing a degree that would be of assistance to the assessee. Likewise, the expenditure incurred for pursuit for higher studies by a partner which can yield beneficial results to the company was held to be business expenditure under Section 37 in *Commissioner of Income Tax v. Kohinoor Paper Products*, 1997 (226) ITR 220 (MP). Learned counsel also relied upon the decision of the Karnataka High Court in *CIT v. Ras Information Technologies (Pvt) Ltd.*, 2011 (12) Taxman 158 (Kar).

7. Learned counsel for the revenue relied upon *Natco Exports* (supra) and submitted that the onus to show that the expenditure would accrue to the advantage of the assessee's business has to be discharged first and that while doing so, expenditure which is otherwise personal cannot be generally allowed to be deducted. It was submitted that in *Natco Exports* (supra), the decision of the Bombay High Court in *Sakal* (supra) was noticed and the Court further held that *Sakal* (supra) stood distinguished by *Mustang Mouldings P. Ltd. v. ITO*, 2008 (306) ITR 361. It was submitted that given these decisions and the fact which emerged from a cumulative reading of the AO and the CIT (Appeals), the impugned order cannot be termed as erroneous and does not call for interference.

8. This Court has considered the materials on record. There can be no doubt that the burden of showing that expenditure would be wholly and exclusively for the purpose of business under Section 37(1) is



upon the assessee and that personal expenditure cannot be claimed as business expenditure. The question is whether these twin requirements are said to have been satisfied in the circumstances of this case. The first is what are the materials on record? The assessee furnished its resolution authorizing disbursement of the expenses to fund Dushyant Poddar's MBA. It secured a bond from him, by which he undertook to work for five years after return within a salary band and he had in fact worked after graduating from the University for about a year before starting his MBA course. In *Natco Exports* (supra), the student had applied directly when she was pursuing her graduation. There was a seamless transition as it were between the chosen subject of her undergraduate course and that which she chose to pursue abroad. In the present case, the facts are different. Dushyant Poddar was a commerce graduate. The assessee's business is in investments and securities. He wished to pursue an MBA after serving for an year with the company and committed himself to work for a further five years after finishing his MBA. There is nothing on record to suggest that such a transaction is not honest. Furthermore, the observation in *Natco Exports* (supra) with respect to a policy appears to have been made in the given context of the facts. The Court was considerably swayed by the fact that the Director's daughter pursued higher studies in respect of a course completely unconnected with the business of the assessee. Such is not the case here. Dushyant Poddar not only worked but – as stated earlier – his chosen subject of study would aid and assist the company and is aimed at adding value to its business.



9. Whilst there may be some grain of truth that there might be a tendency in business concerns to claim deductions under Section 37, and foist personal expenditure, such a tendency itself cannot result in an unspoken bias against claims for funding higher education abroad of the employees of the concern. As to whether the assessee would have similarly assisted another employee unrelated to its management is not a question which this Court has to consider. But that it has chosen to fund the higher education of one of its Director's sons in a field intimately connected with its business is a crucial factor that the Court cannot ignore. It would be unwise for the Court to require all assessees and business concerns to frame a policy with respect to how educational funding of its employees generally and a class thereof, i.e. children of its management or Directors would be done. Nor would it be wise to universalize or rationalize that in the absence of such a policy, funding of employees of one class – unrelated to the management – would qualify for deduction under Section 37(1). We do not see any such intent in the statute which prescribes that only expenditure strictly for business can be considered for deduction. Necessarily, the decision to deduct is to be case-dependent.

10. In view of the above discussion, having regard to the circumstances of the case, this Court is of the opinion that the expenditure claimed by the assessee to fund the higher education of its employee to the tune of ₹23,16,942/- had an intimate and direct connection with its business, i.e. dealing in security and investments. It was, therefore, appropriately deductible under Section 37(1).



11. The AO is thus directed to grant the deduction claimed. The impugned order and that of the lower authorities are hereby set aside. The appeal is allowed in the above terms. No costs.

S. RAVINDRA BHAT
(JUDGE)

RAJIV SHAKDHER
(JUDGE)

FEBRUARY 25, 2014

