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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 12th March, 2012.

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NATCO EXPORTS PVT LTD Appellant
Through Mr. Piyush Kaushik, Adv.
versus

CIT Respondent
Through Ms. Suruchi Aggarwal, sr. standing
counsel

CORAM:**HON'BLE MR. JUSTICE SANJIV KHANNA****HON'BLE MR. JUSTICE R.V. EASWAR****SANJIV KHANNA,J: (ORAL)****CM No.3682 & 3683 of 2012 (Delay)**

These are applications for condonation of delay in filing and re-filing of the appeal. Ld. sr. standing counsel for the Revenue has no objection if the delay is condoned. Accordingly, the delay in filing and re-filing of the appeal is condoned.

Applications are disposed of.

ITA 150/2012

1. NATCO Exports Pvt. Ltd. in this appeal under Section 260A of



the Income Tax Act, 1961 (Act, for short) impugns the order dated 29th March, 2011 passed by the Income Tax Appellate Tribunal ('Tribunal', for short). The appeal pertains to assessment year 2006-07.

2. Ld. counsel for the appellant relies upon paragraph 3 and 5 of the impugned order and submits that in the present case, the Tribunal has erred in holding that the expenditure incurred on education of one of the directors Ms. Ruchika Grover, who had undergone a course called Master of Science in Entrepreneurship at United Kingdom from University of Nottingham, was not expenditure wholly and exclusively incurred for the purpose of business. Ld. counsel for the appellant relies on decision of the High Court of Karnataka in ***Krishna Fabrications Ltd. Vs. Joint Commissioner of Income Tax*** (2010) 192 Taxman 287 (Kar). The relevant quote from the decision of Karnataka High Court reads as under: -

“After hearing the learned counsel for the parties, we are of the view just because the two directors were children of the managing director, of the company, cannot be a ground for the AO to reject the claim of the assessee, until and unless. It is established that these two children of the managing director, sponsored to acquire higher education are not connected with the business of the company, even though they are directors. Since the vital issue has not been considered by the AO and such a mistake is committed by the CIT(A) as well as the Tribunal, we have



no other business, except to set aside all the orders and remand the matter to the AO for fresh consideration without answering questions of law framed herein, keeping open all the contentions since the order of dismissal is in the nature of best judgment assessment.”

3. Section 37 of the Act postulates that expenditure which is wholly and exclusively incurred for the purpose of business can be allowed as a deduction in computing the taxable business income. The twin conditions must be satisfied. The onus is on the assessee to show and establish that the twin conditions are satisfied. Personal expenses cannot be claimed under Section 37 of the Act.
4. In the present case, the findings recorded by the CIT(Appeals) read as under: -

“3.2 I have considered the submissions made by the authorized representative of the appellant company. During the course of present proceedings, it has been observed that there were four directors in the appellant company namely Sh. Ajay Grover, Smt. Manju Grover, Ms Ruchika Grover and Sh. Naresh Inderpal Singh. It is further observed that in earlier years as well as in later years, the appellant company has not sent any of his employees/directors for studying abroad. Bio-data of Ms Ruchika Grover has been perused as per which the date of birth is 30.09.1984 and she completed her graduation from Shri Ram College of Commerce, Delhi University in the year 2005. The graduation result was declared on 12.07.2005 whereas Ms. Ruchika Grover applied to University of Nottingham, UK much earlier than the



declaration of graduation result by Delhi University as in a later (sic.) dated 25.05.2005 written by Nottingham University to Ms. Ruchika Grover (intimating her selection for the post graduate course) clearly suggestive of the fact that the expenditure is in the nature of personal expenditure and has no relation with the business activities of the appellant company. The appellant company is a family concern where the parents of Ms. Ruchika Grover and Ms. Ruchika Grover are the directors. Sh. Naresh Inderapal Singh has been taken as director only till the time of property owned by him at Cottage No.9, West Patel Nagar, New Delhi-110008 is mortgaged to Union Bank of India with rider that he shall automatically cease to be the director of appellant company as and when the property is released from mortgage of the Bank meaning thereby that Sh. Naresh Inderpal Singh has no say in the day-to-day running of the appellant company. Ms. Ruchika Grover did Commerce from one of the very reputed institution of Delhi University is concerned and if the argument of the appellant company that higher studies shall benefit the appellant company then the same reasoning is applicable as far as doing graduation from Delhi University and the appellant or for that matter all other assesseees doing business shall start taking the plea that the studies are in connection with the business and hence to be allowed as “business expenditure”.

3.2.1 The case laws of JB Advani & Co. Ltd. Vs JCIT (supra) and Sakal Paper P. Ltd. Vs. CIT (Supra), on which the appellant relied, are not applicable to the present case as these decisions had been distinguished later on in Mustang Mouldings P. Ltd. Vs ITO 306 ITR 361 (ITAT –



Mum) where the assessee company was controlled by the family members and it was held that the expenditure on higher education of a child was personal expenditure of father/parents. Reference can be made to the case law of Mac Explotec Pvt. Ltd. Vs Cit 286 ITR 378 (Kar) where the High Court held that the expenses incurred by the assessee company in sending its director's son aboard for training in general management were not allowable since the training did not pertain to the assessee's business. In doing so, the Karnataka High Court concurred with the ratios of case laws of CIT vs. Hindustan Hosiery Ind. 209 ITR 383, M. Subramaniam Brothers vs. CIT 250 ITR 769 and CIT vs. R.K.K.R. Steels Pvt. Ltd. 258 ITR 306. As there is no business connection between the expenditure incurred on higher education of Ruchika Grover who went abroad for doing M.Sc. in Entrepreneurship immediately after completing her graduation and there being no history of the appellant company as far as sending its workforce abroad for training which can be said to have relation with relation with the business activities hence, I uphold the action of the Assessing Officer in making addition on account of expenditure relating to higher studies of Ms. Ruchika Grover. This ground of appeal is taken as rejected accordingly”.

5. The aforesaid findings are findings of fact and have been upheld by the Tribunal. We may also note that in the present case Ruchika Grover had not executed any bond that she would work for the appellant company after she completes the course and on failure shall return the money spent. The findings of the Tribunal clearly show



that Ruchika Grover, who had completed her graduation in the year 2005 and immediately thereafter applied for further studies in University of Nottingham in United Kingdom. It is a case where she continued with her studies. The said application for undertaking the studies abroad was made even prior to her completing the course. The alleged board resolution has rightly not been relied upon as it was not relied and filed before the Assessing Officer. Considering the facts and circumstances of the case, the aforesaid expenditure, it has been held, cannot be regarded as wholly and exclusively incurred for the purpose of business. The findings are findings of fact. The findings are not perverse.

The appeal is dismissed.

SANJIV KHANNA, J.

R.V.EASWAR, J.

MARCH 12, 2012

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