

CASE NO.:
Appeal (civil) 2415 of 2004

PETITIONER:
Britannia industries Ltd.

RESPONDENT:
Commissioner of Income Tax, West Bengal, Kolkata & Anr.

DATE OF JUDGMENT: 05/10/2005

BENCH:
B.P. Singh, Tarun Chatterjee & Altamas Kabir

JUDGMENT:
JUDGMENT

ALTAMAS KABIR, J

The question which has been raised in this Civil Appeal appears to have been considered by different High Courts which have expressed divergent views in the matter. The said question has come up before this Court for consideration to resolve the anomalous situation.

The dispute in the instant case is with regard to disallowance of a sum of Rs.31,38,017/- for the Assessment Year 1994-1995, which sum was claimed by the assessee as expenses towards rent, repairs, depreciation and maintenance of a guest house which was purportedly used in connection with the business of the company.

Chapter IV of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), deals with computation of total income and is divided into several parts. Part 'D', beginning with Section 28, deals with profits and gains of business or profession. Sections 30 to 36 relate to certain deductions which are allowed inter alia, on account of rent, rates, taxes, repairs and insurance in respect of premises and buildings used for the purposes of business or profession and includes

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 rent, rates, local rates, municipal taxes;

(c) the amount of any premises paid in respect of insurance against risk of damage destruction of the premises paid in respect of insurance against risk of damage destruction of the premises.

In the explanation to Section 30, it has been indicated that the amounts paid on account of the items indicated above shall not include any expenditure in the nature of capital expenditure.

Sections 31 and 32 deal with the amounts which are allowable in respect of repairs and insurance of machinery, plant and furniture

used for the purposes of the business or profession and in respect of depreciation of buildings, machinery, plant or furniture, being tangible assets along with other intangible assets.

The facts involved in this case do not attract the provisions of Sections 30 to 36 of the Act, but have been referred to on account of reference made thereto under Section 37 of the Act which is important for our purpose. In order to appreciate the arguments advanced on behalf of the appellant, the provisions of Section 37 as they stood during the relevant assessment year are set out herein below :-
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".

(2) Notwithstanding anything contained in sub-section (1), no expenditure in the nature of entertainment expenditure shall be allowed in the case of a company, which exceeds the aggregate amount computed as hereunder:-

- i) On the first Rs.10,00,000/- of the profits and gains of the business (computed before making any allowance under Section 33 [or Section 33A] or in respect of entertainment expenditure) At the rate of 1 per cent or Rs.5,000/- whichever is higher;
- ii) On the next Rs.40,00,000/- of the profits and gains of the business (computed in the manner aforesaid) At the rate of 3 = per cent;
- iii) On the next Rs.1,20,00,000/- of the profits and gains of the business (computed in the manner aforesaid) At the rate of 4 = per cent;
- iv) On the balance of the profits and gains of the business (computed in the manner aforesaid)
Nil

(2A) 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) On the first Rs.10,00,000/- of the profits and gains of the business or profession (computed before making any allowance under [Section 32A or] Section 33 or Section 33A or in respect of entertainment expenditure)

At the rate of = per cent or Rs.5,000/- whichever is higher;
ii) On the next Rs.40,00,000/- of the profits and gains of the business or profession (computed in the manner aforesaid)

At the rate of < per cent;
iii) On the balance of profits and gains of the business or profession (computed in the manner aforesaid)

At the rate of 1/8 per cent.

So, however, that the allowance shall in no case exceed Rs.50,000/-.

Provided that where the previous year of any assessee falls partly before and partly after the 30th day of September, 1967, the allowance in respect of such expenditure incurred during the previous year shall not exceed-

a) In the case of a company-

i) in respect of such expenditure incurred before the 1st day of October, 1967, the sum which bears to the aggregate amount computed at the rate or rates specified in sub-Section (2), the same proportion as the number of days comprised in the period commencing on the 1st day of such previous year and ending with the 30th day of September, 1967, bears to the total number of days in the previous year;

ii) in respect of such expenditure incurred after the 30th day of September, 1967, the sum which bears to the aggregate amount computed at the rate or rates specified in this sub-section, the same proportion as the number of days comprised in the period commencing on the 1st day of October, 1967, and ending with the last day of the previous year bears to the total number of days in the previous year;

(b) in any other case-

i) in respect of such expenditure incurred before the 1st day of October, 1967, the amount admissible under sub-section (1);

ii) in respect of such expenditure incurred after the 30th day of September, 1967, the sum which bears to the aggregate amount computed at the rate or rates specified in this sub-section, the same proportion as the number of days comprised in the period commencing on the 1st day of October, 1967, and ending with the last day of the previous year bears to the total number of days in the previous year.

[Explanation 1] : For the purposes of this 'entertainment expenditure' includes-

i) the amount of any allowance in the nature of entertainment allowance paid by the assessee to any employee or other person after the 29th of February, 1968;

ii) the amount of any expenditure in the nature of entertainment expenditure [not being expenditure incurred out of an allowance of the nature referred to in Clause (i) incurred after the 29th day of February, 1968, for the purposes of the business or profession of the assessee by any employee or other person).

Explanation 2 : For the removal of doubts, it is hereby declared that for the purposes of this sub-section and sub-section (2B), as it stood before the 1st day of April 1977, 'entertainment expenditure' includes expenditure on provision of hospitality of every kind by the assessee to any person, whether by way of provision of food or beverages or in any other manner whatsoever and whether or not such provision is made by reason of any express or implied contract or custom or usage of trade, but does not include expenditure on food or beverages provided by the assessee to his employees in office, factory or other place of their work.

(2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.

(3) Notwithstanding anything contained in sub-section (1), any expenditure incurred by an assessee after the 31st 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.

(3A) Notwithstanding anything contained in sub-section (1), where the expenditure or, as the case may be, the aggregate expenditure incurred by an assessee on any one or more of the items specified in sub-section (3B) exceeds one hundred thousand rupees, twenty per cent of such excess shall not be allowed as deduction in computing the income chargeable under the head 'profits and gains' of business or profession.

(3B) The expenditure referred to in sub-section (3A) is that incurred on \026

- i) advertisement, publicity and sales promotion, or
- ii) running and maintenance of aircraft and motor cars; or
- iii) payments made to hotel.

Explanation : for the purposes of sub-sections (3A) and (3B) \026

a) the expenditure specified in clause (i) to clause (iii) of sub-section (3B) shall be aggregate amount of expenditure incurred by the assessee as reduced by so much of such expenditure as is not allowed under any other provisions of this Act;

b) expenditure on advertisement, publicity and sales promotion shall not include remuneration paid to employees of the assessee engaged in one or more of the said activities;

c) Expenditure on running and maintenance of aircraft and motor cars shall include \026

- i) expenditure incurred on chartering any aircraft and expenditure on hire charges for engaging cars plied for hire;
- ii) conveyance allowance paid to employees and, where the assessee is a company, conveyance allowance paid to its directors also.

(3C) Nothing contained in sub-section (3A) shall apply in respect

of expenditure incurred by an assessee, being a domestic company as defined in clause (2) of Section 80B, or a person (other than a company) who is resident in India in respect of expenditure incurred wholly and exclusively on \026

- i) advertisement, publicity and sales promotion outside India in respect of the goods, services or facilities which the assessee deals in or provides in the course of his business;
- ii) running and maintenance of motor cars in any branch, office or agency maintained outside India for the promotion of the sale outside India of such goods, services or facilities.

(3D) No disallowance under sub-section (3A) shall be made-

- i) in the case of an assessee engaged in the business of operation of aircraft, in respect of expenditure incurred on running and maintenance of such aircraft;
- ii) in the case of an assessee engaged in the business of running motor cars on hire, in respect of expenditure incurred in running and maintenance of such motor cars.

(4) Notwithstanding anything contained in sub-section (i) or sub-section (3) \026

- 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 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 was 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 \026

- (i) residential accommodation in the nature of a guest-house shall include accommodation hired or reserved by the assessee in a hotel for the 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 the 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)."

The aforesaid provision of the Income Tax Act has undergone several changes from time to time and some of the portions, which are relevant for a decision in this case have since been omitted. However, it may be of interest to note that Sub-section (1) of Section 37 was brought on the statute book in 1964 and underwent several other changes thereafter. Sub-section (3) of Section 37 was inserted by the Finance Act 1964 with effect from 1st April, 1964 and was, thereafter, omitted by the Finance Act, 1997 with effect from 1st April, 1998.

Similarly Sub-section (4) was inserted by the Finance Act 1970 with effect from 1st April, 1970 and was, thereafter, omitted by the Finance Act, 1997 with effect from 1st April, 1998.

As will be apparent from a reading of Sub-section (1) of Section 37 of the Act, any expenditure not being expenditure of the nature described in Sections 30 to 36, inter alia, allowed and expended wholly and exclusively for the purposes of business or profession, is to be allowed in computing the income chargeable under the heading "profits and gains of business or profession". In other words, Section 37 is to be read to the exclusion of the amounts allowable under Sections 30 to 36.

Although, the expression "premises used for the purposes of the business or profession" has been used along with the expression "buildings and furniture" under Sections 30, 31 and 32 of the Act, for the first time the expression "residential accommodation including any accommodation in the nature of a guest house" has been used in Sub-section (3) of Section 37 of the Act. As will be seen, Sub-section (3) of Section 37 indicates that notwithstanding anything contained in Sub-section (1) any expenditure incurred by an assessee after 31st of March, 1964, inter alia, on maintenance of any residential accommodation in the nature of a guest house and hotel expenses, would be allowed only to the extent and subject to such conditions, if any, as may be prescribed.

Sub-section (4), which was inserted in the statute book with effect from 1st April, 1970, is specific and provides that notwithstanding anything contained in Sub-section (1) and Sub-section (3) no allowance shall be made in respect of any expenditure incurred by the assessee after 28th February, 1970, on the maintenance of any residential accommodation in the nature of guest house and no allowance shall be made in respect of depreciation of any building used as a guest house or depreciation of any assets in the guest house. However, a guest house maintained as holiday home in the circumstances indicated have been excluded from the purview of Sub-section (4) referred to hereinabove.

Inasmuch as, doubts still remained regarding the nature of accommodation used as a guest house by the companies, Sub-section (5) was included in Section 37 by the Finance Act in 1983 with effect from 1st April 1979 and was subsequently omitted by the Finance Act, 1997 with effect from 1st April, 1998. At the relevant point of time, namely, the assessment year 1994-1995, all the aforesaid provisions of Section 37 were available and, therefore, applicable to the case of the appellant-company.

Dr. Debi Prasad Pal, learned senior counsel, appearing on behalf of the company, urged that Sections 30 to 32 deal with specific types of expenditure which are allowable in terms of the said provisions, whereas Section 37 deals with all other expenditure, not being expenditure described in Sections 30 to 36 of the Act, subject to

the conditions:

- (a) the expenditure must not be of a capital expenditure;
- (b) expenditure must not be of a personal nature; and
- (c) the expenditure must be incurred wholly and exclusively for the purposes of business.

Dr. Pal also urged that Section 37 contains general provisions allowing deductions in respect of expenditure not included within Sections 30 to 36 of the Act. Dr Pal also urged that since expenditure incurred by the assessee towards payment of rent, rates, taxes, repairs and insurance of premises, buildings and furniture used for the purposes of the business or profession has been provided for specifically under Sections 30, 31 and 32 of the Act, by virtue of the non-obstante clause used in Sub-section (1) of Section 37 such expenses could not again be referable to Section 37 and the different provisions thereof. In other words, Dr. Pal urged that since the aforesaid expenses had been specifically allowed to be deducted the said benefit could not be taken away by the including of the expression "residential accommodation including any accommodation in the nature of a guest house" in Sub-section (3) of Section 37 of the said Act.

Dr. Pal then urged that having allowed a partial benefit, it could not have been the intention of the Legislature to take away the entire benefit by incorporating Sub-section (4) with effect from 1st April, 1970. It was urged that such a view would be borne out from the fact that the provisions relating to the restrictions imposed with regard to expenses incurred towards the maintenance and other expenditure of guest houses run by companies, were sought to be omitted with effect from 1st April, 1998.

Dr. Pal urged that the interpretation regarding the allowability of rents, repairs, insurance and maintenance expenses of guest houses under Section 37(3) of the Act fall for consideration of the Bombay High Court in Commissioner of Income Tax vs. Chase Bright Steel Limited., reported in (1989) 177 ITR 124, wherein it was held that business expenditure, such as rent for premises used as a guest house and amounts spent on repairs to furniture used therein, could not be disallowed under Section 37(3) of the Act, inasmuch as the same had been allowed under Sections 30 and 31 of the Act.

Dr. Pal also referred to another decision of the Bombay High Court in Century Spinning and Manufacturing Co. Ltd. vs. Commissioner of Income Tax, reported in (1991) 189 ITR 660, where following its earlier decision in the case of Chase Bright Steel Private Ltd. (supra), it was held that Sub-Section (4) of Section 37 of the Act is a non-obstante clause in relation to Sub-section (1) and Sub-Section (3) of Section 37 and if any expenditure or allowance was made allowable in other sections of the Act, the same could not be withdrawn or denied to the assessee because of the prohibitory provisions of Sub-section (4) of Section 37.

A similar view appears to have been expressed by the Gujarat High Court in case of Commissioner of Income Tax vs. Ahmedabad Manufacturing and Calico Printing Co. Ltd., reported in (1992) 197 ITR 538; wherein it was also held that expenses incurred of the nature described in Sections 30 to 36 could not be disallowed under Section 37 (4) of the Act.

Dr. Pal also referred to a Full Bench decision of the Kerala High Court in Commissioner of Income Tax vs. Travancore Cements Ltd., reported in (1999) 240 ITR 816, wherein a distinction was sought to be made between the expression "repairs" as used in Section 37 and the expression "maintenance" as used in Sub-section (3A) and (3B) of Section 37. Based on such distinction, it was held that the non-obstante clause in Section 37 (3A) cannot have any overriding effect in respect of other provisions pertaining to the allowances of expenditure under Sections 30 to 36 of the Act.

Dr. Pal submitted that a similar distinction has been made by the Madras High Court in Commissioner of Income Tax vs. South

India Viscose Ltd., reported in (2003) 259 ITR 107. Based on such distinction, it was held that rent paid for a guest house has been specifically dealt with in Section 30 and could not, therefore, be disallowed under Sub-section (4) of Section 37.

Dr. Pal lastly referred to two decisions of the Calcutta High Court in Kesoram Industries and Cotton Mills Ltd. vs. Commissioner of Income Tax, reported in (1991) 191 ITR 518 and Commissioner of Income Tax vs. Upper Ganges Sugar Mills Ltd., reported in (1994) 206 ITR 215, which have both taken the view that business expenditure for guest houses would not be allowable, having regard to the provisions of Section 37(4) of the Act.

Dr. Pal submitted that apart from the said two decisions of the Calcutta High Court, the uniform decision of most of the High Courts appears to be that since the expenditure incurred for rents, rates, taxes, repairs and insurance of buildings and premises and furniture used for the purposes of business or profession, have been specifically provided for in Sections 30, 31 and 32 of the Act, benefits thereof could not be denied to the assessee under the relevant provisions of Section 37 of the Act.

Dr. Pal urged that the judgment under appeal did not give any independent reasoning but was rendered following the decision of the Calcutta High Court in Century Spinning and Manufacturing Co. Ltd. and Upper Ganges Sugar Mills Ltd. (supra) and could not therefore be sustained.

Appearing for the Revenue, Mr. Rajeev Dutta, learned senior counsel, however, contended that the provisions of Section 37 would have to be read in isolation from the provisions of Sections 30 to 36 of the Act as contemplated by the non-obstante clause in Sub-section (1) of Section 37. Mr. Dutta urged that the provisions of Section 37 had been correctly interpreted in the two decisions of the Calcutta High Court in Century Spinning and Manufacturing Co. Ltd. and Upper Ganges Sugar Mills Ltd. (supra).

Mr. Dutta urged that it was the clear intention of the Legislature to exclude the benefit of deduction in respect of guest houses which were being run and maintained by companies in a lavish manner. Mr. Dutta submitted that while premises and buildings had been referred to in general terms in Sections 30, 31 and 32 of the Act, guest houses had been separately categorized for the purposes of Section 37 which would be quite evident from the manner in which expenses, including rent and maintenance, were sought to be withdrawn in respect of such guest houses. Mr. Dutta submitted that the intention of the Legislature would be further clear from the insertion of Sub-section (5) which brought within the scope and ambit of Section 37(4) all accommodation by whatever name called in the nature of a guest house.

In support of his submissions, Mr. Dutta referred to the decision of Rajasthan High Court in Commissioner of Income Tax vs. Instrumentation Ltd. reported in (2002) 258 ITR 513, where upon considering the views expressed by the Bombay High Court and the Gujarat High Court in the cases of Chase Bright Steel Ltd. and Ahmedabad Mfg. And Calico Printing Co. Ltd. (supra), it was urged that expenditure incurred towards rent and maintenance of guest houses after 28th February 1970, was not deductible in view of Section 37(4) of the Act.

Reference has also been made to a decision of the Madras High Court in Commissioner of Income Tax vs. Mathurantakam Co-operative Sugar Mills Ltd., reported in (2000) 241 ITR 817; wherein certain expenses, which came within the mischief of Section 37(4) of the Act were disallowed.

Other similar decisions of the Madras and the Rajasthan High Courts were also referred to.

Mr. Dutta lastly referred to another decision of the Calcutta High Court in the case of Commissioner of Income Tax vs. Biswanath Tea Co. Ltd. (2003) 264 ITR 166 to which one of us (Hon'ble Altamas Kabir, J) was a party. In the said case the Calcutta High

Court had occasion to consider the various decisions which have also been cited by Dr. Pal in the instant case and upon a consideration of the language of Section 37(4), it was held that having regard to the unambiguous bar incorporated under Sub-section (4) of Section 37, the benefits indicated in Sections 30 to 36 although, independent of Section 37, could not be related to the guest house maintained by the assessee. It was held that apart from the view taken in Upper Ganges Sugar Mills Ltd. and Kesoram Industries and Cotton Mills Ltd., any other interpretation would negate the object of the prohibition engrafted in Sub-Section (4).

The only question which we are called upon to consider in the instant case is whether the expression 'premises and buildings' referred to in Sections 30 and 32 and used for the purposes of the business or profession would include within its scope and ambit the expression 'residential accommodation including any accommodation in the nature of guest house' used in Sub-sections (3), (4) and (5) of Section 37 of the Act. While the two expressions can be similarly interpreted, a distinction has been sought to be introduced for the purposes of Section 37 by specifying the nature of building to be a guest house. In our view, the intention of the Legislature appears to be clear and unambiguous and was intended to exclude the expenses towards rents, repairs and also maintenance of premises/accommodation used for the purposes of a guest house of the nature indicated in Sub-section (4) of Section 37. When the language of a statute is clear and unambiguous, the courts are to interpret the same in its literal sense and not to give it a meaning which would cause violence to the provisions of the statute. If the Legislature had intended that deduction would be allowable in respect of all types of buildings/accommodations used for the purposes of business or profession, then it would not have felt the need to amend the provisions of Section 37 so as to make a definite distinction with regard to buildings used as guest houses as defined in Sub-section (5)

of Section 37 and the provisions of Sections 31 and 32 would have been sufficient for the said purpose. The decisions cited by Dr. Pal contemplate situations where specific provision had been made in Sections 30 to 36 of the Act and it was felt that what had been specifically provided therein could not be excluded under Section 37. The clarification introduced by way of Sub-section (5) to Section 37 was also not considered in the said case.

As mentioned in the decision of the Calcutta High Court in the case of Biswanath Tea Co. Ltd. (supra), any other interpretation would negate the very purpose of Sub-section (4) of Section 37.

It is another matter that at a subsequent point of time, the Legislature felt it necessary to omit the said provisions, but they were in the statute book at the relevant point of time. The rigours of the same, in our view, cannot be avoided in the instant case.

The appeal is accordingly dismissed, but without any order as to costs.