

Gujarat High Court

Commissioner Of Income-Tax, ... vs Dascroi Taluka Co-Operative ... on 15 September, 1980

Equivalent citations: (1980) 21 CTR Guj 38, 1980 126 ITR 413 Guj

JUDGMENT DIVAN C.J. - In this case, at the instance of the revenue, the following question has been referred to us for our opinion :

"Whether, on the facts and in the circumstances of the case, the expenditure incurred by the assessee on account of traveling expenses and for purchase of utensils for presentation to its members on the occasion of the silver jubilee are admissible as business expenditure ?"

The assessee in this case is a co-operative society engaged in the business of dealing in sugar, kerosene, steel, etc., distributing the same to its members, both individuals and societies. The assessment year under consideration is the assessment year 1970-71, the relevant accounting period being the year ending June 30, 1969. The assessee celebrated silver jubilee on completing twenty-five years of its existence and on this occasion it sent certain employees to Bombay for the purpose of purchase of wall-clocks for presentation to other co-operative societies who were members of the assessee. The assessee also purchased certain household stainless steel utensils which were distributed to the members of those society. The break-up of the expenses in this connection was as follows : Rs. 3,223.40 spent on account of traveling expenses of the members of the managing committee to and from Bombay for the purchase of utensils for presentation on the occasion of the silver jubilee, and Rs. 52,048.59 spent on the purchase of utensils like stainless steel bowls, plates, tumblers, spoons, etc., for presentation on the occasion. These are the only two items of expenditure which are relevant for the purposes of this judgment. The ITO did not allow the expenditure on these two items in assessment while computing the assessee's total income. The appeal preferred by the assessee succeeded and the AAC accepted the claim for deduction of these two items. The department took the matter in appeal to the Income-tax Appellate Tribunal and the Tribunal dismissed the appeal for the revenue. The Tribunal held that the presentation of articles to its members having business transactions was on the occasion of the silver jubilee celebrations, and the expenses incurred in connection with traveling for the purchase of the articles were expenses in the course of and for the purpose of the business and were intended as incentive or encouragement to those members in the course of the business activities or transactions. The Tribunal further held that though the expenses incurred were with a view to encourage the business activities which in turn was calculated to increase the business of the assessee itself, these items could not be regarded as advertisement expenses as contended for by the revenue, because there was no question of advertising its products or publicising the same amongst the member-societies who were already having business transactions with the assessee. The Tribunal, therefore, held that the expenditure could not be said to be governed by any limitation prescribed under s. 37(3) or by any rules framed in connection with advertisement expenditure. The Tribunal also rejected the contention urged on behalf of the department that the expenses were disproportionate since the Tribunal found that the fact of the expenditure was not in dispute and it was not the department's contention that there was any material to show that the expenditure was incurred for any extra-commercial consideration. The contention of the department that since part of the income of the assessee was exempt, only proportionate amount should be allowed as deduction disallowing the proportion attributable to the said exempted part of the income, was also rejected by the Tribunal. Thereafter, at the instance of

the revenue, four questions were sought for in the application under s. 256(1) but, ultimately, the Tribunal has referred the question hereinabove set out for our opinion.

It is clear that these two items of expenditure were spent by the assessee-society on the occasion of its silver jubilee celebrations. As observed by his High Court in CIT v. S. L. M. Maneklal Industries Ltd. [1977] 107 ITR 133 at p. 142 :

"..... the assessee-company had to maintain good relations and by keeping the representative of the foreign collaborators in good humour the work of the assessee-company vis-a-vis the foreign collaborators would be smoothened considerably, it was clearly an act of good management and good managership to generate goodwill and such goodwill would help and was bound to help the assessee-company in keeping its relations with the employees of the foreign collaborators working smoothly and on proper lines."

Since these items of expenditure were incurred by the assessee-company for the purposes of keeping good relations with its members working smoothly it must be held that this amount was incurred by the assessee for the purpose of business since it was for the purpose of generating goodwill that this amount was spent. It is, therefore, clear that, as in S. L. M. Maneklal Industries case [1977] 107 ITR 133 (Guj), such items of expenditure which project the good image of the assessee-society amongst its members and keeps and members satisfied and the relations with the members working smoothly, are part of the business expenditure of the assessee-society. In Amarjothi Pictures v. CIT [1968] 69 ITR 755 (Mad), a similar expenditure incurred by the assessee in that case on the occasion of the silver jubilee week of the exhibition of a particular picture of which the assessee was acting as distributor and exhibitor, was allowed as a deduction as business expenditure under s. 10(2)(xv). Similarly, in CIT v. Tata Sons Pvt. Ltd. [1978] 111 ITR 290 (Bom), the amount spent by the managing agency company on the occasion of certain golden jubilee celebrations of the managed mills units was allowed as business expenditure and it was held that this expenditure was made wholly and exclusively keeping in view the business interest of the assessee-company. In our opinion, the principle laid down by this High Court in S. L. M. Maneklal Industries case [1977] 107 ITR 133 and by the Bombay and the Madras High Court in the above two decision would apply to the facts of the case before us. The utensils were distributed only amongst its members -individual members as well as other co-operative societies who were members of the assessee-society. Under these circumstances, the amounts spent for giving presents to the members of the society on the occasion of the silver jubilee could be said to be expenditure incurred wholly and exclusively for the purpose of its business since this amount was spent for keeping alive its good image amongst its members and ensuring that goodwill and ensuring the continuity of business with the member-societies as before.

It cannot be said that this amount was for the purpose of advertisement. It was more by way of establishing goodwill rather than of advertising that this amount was spent and hence the question of invoking the provisions of s. 37(3) of the I.T. Act, 1961, and r. 6B of the I.T. Rules, 1962, does not arise. It is only if the amount was spent for advertisement that the restrictions placed by rule 6B of the I.T. Rules which deals with restrictions of presentation articles which can be presented by way of advertisement, would come into play. Since we have come to the conclusion that this amount was

spent for the purpose of generating goodwill and inducing the members to continue to maintain good relations with the society, it cannot be said that the amounts were spent by way of advertisement. The society was not distributing these articles to all its customers, members as well as non-members, but it was distributing its presents in the shape of stainless steel utensils, etc., only to its members.

Under these circumstances, it must be held that the amounts spent by the assessee-society on these two items, one for the purchase of stainless steel utensils and the other for the purpose of tour expenses of the members of the managing committee to visit Bombay for the purpose of purchasing these stainless steel articles, must all be considered to be business expenditure within the meaning of s. 37 and allowable as such. Therefore, the question referred to us must be answered in the affirmative, that is, in favour of the assessee and against these revenue. The Commissioner will pay the costs of this reference to the assessee.