In the Income-Tax Appellate Tribunal,
Delhi Bench 'D', New Delhi

Before : Shri Amit Shukla , Judicial Member And
Shri L.P. Sahu, Accountant Member

ITA No. 295/Del/2016
Assessment Year: 2010-11

Loesche India Pvt. Ltd., M-38/1, Intl. Business Centre, Middle Circle, Connaught Place, New Delhi. PAN- AAACL0980H **(Appellant)**	**vs.**	Addl. CIT, Range-15, New Delhi. **(Respondent)**

Assessee by	Sh. D. Subramanian & Sh. Alkesh Babbar, CA
Revenue by	Sh. Amit Jain, Sr. DR

Date of Hearing	09.08.2018
Date of Pronouncement	13.08.2018

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of the ld. CIT(A)-V, Delhi dated 27.11.2015 for the assessment year 2010-11 on the following grounds :

"1. That the order of the Learned Commissioner of Income Tax [Appeals V] New Delhi [hereinafter stated as CIT [All is bad in law and on facts.

2. That the learned CIT (A) has erred on facts and in law in sustaining the disallowance of Rs. 1,205,531 made by the assessing officer in relation to medical insurance premium paid for the family members of the employees of

the company on the ground that such expenditure, though incurred in terms of contractual obligations entered into with the employees, cannot be stated to have been incurred wholly and exclusively for the purposes of business of the assessee.

3. That any consequential relief, to which the assessee may be entitled to under the foregoing grounds of appeal, may kindly be granted to the assessee."

2. The brief facts of the case have been brought out by the ld. CIT(A) as under :

3. The appellant is engaged in the business of Design & Engineering, manufacturing and trading of vertical Roller Grinding Mill Systems & Components thereof for cement, steel, power plants and other mineral based industries. A return declaring total income of Rs.19,12,54,863/- was e-filed by the assessee on 30.09.2010. During the course of scrutiny, a perusal of the details placed on record revealed that during the above year, the assessee has claimed an amount of Rs. 15,48,654/- on account of medical insurance. Since an addition of Rs. 10,91,169/- during AY 2009-10 in the case of the assessee company was made in respect of payment of medical insurance premium covering the family members of the employees, vide further questionnaire dated, 13.11.2013, the assessee company was further required to furnish details of the relations in respect of whom premium has been paid and to show cause why premium paid for insurance of relatives of employees be not disallowed (being gratuitous, not on commercial lines,) since obligation of employee is being met by employer. As per the appellant the expenditure incurred towards health insurance premium of family of employees is claimed as allowable expenditure under section 37 of the Income tax Act, 1961 as the same has been incurred wholly and exclusively for the purposes of the business. A perusal of the list of persons with respect to whom the medical insurance premium has been incurred would reveal that the amounts have been incurred, leave apart immediate family (though subject to allow ability as being discussed later on), towards the medical insurance of Mother in Law of the Managing Director, leave apart his independent children, and also towards the married sisters of the other

directors of the company. Thus it could be well said that under the guise of medical premium with respect to family members, not even the direct but also the indirect and distant relatives of the key managerial persons are being benefited.

3.1. According to the AO, the appellant had adopted an inequitable and unreasonable system by bearing the medical insurance expenses of only the relatives of key managerial persons and their distant family members. Relying of certain case laws such as the Madras High Court decision in India Express Newspapers (Madurai) Pvt. Ltd. (238 ITR 070) and Calcutta High Court decision in MD Jindial (164 ITR 28), the AO was of the view that he was entitled to lift the veil of corporate entity in order to ascertain the actual intention. He distinguished the case law of Bombay High Court in Mahindra & Mahindra Ltd., on which reliance was placed by the appellant, since the instant benefit was not for achieving the purpose of corporate social responsibility but in the instant case it was to benefit a few selected employees. Even otherwise since the employees had not offered what amounted to be perquisites in their hands u/s. 17(2)(iv), he was of the view that these were not business expenses qualifying for deduction u/s. 37(1).

3. The assessee carried the matter in appeal before the ld. CIT(A), who after considering the detailed submissions of the assessee and the order of the Assessing Officer, sustained the addition made by the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal.

4. The ld. AR of the assessee reiterated the submissions made before the authorities below and has also submitted a written synopsis before us, stating as under :

6.1 Allowability of the expenditure disallowed

The allowability of this expense is governed by section 37(1). The main requisites laid down by the Supreme Court for allowability of expenditure u/s 37(1) are that the money paid out must be -

a) wholly and exclusively for the purpose of the business or profession; and further

b) must not be for:

(i) Capital expenditure;

(ii) Personal expense; or

(iii) Expense of the character described in section 30 to section 36.

In this connection we may also invite your attention to the decisions of Supreme Court in the following cases - CIT v. Indian Molasses Co. (P.) Ltd. [1970] 78 ITR 474 (SC) [for copy of this judgement pl refer pages 56 to 64 of the accompanying paper book

- sl no. 8]; J.K. Cotton Mfrs. Ltd. v. CIT [1975] 101 ITR 221 (SC); Sassoon J. David & Co. (P) Ltd. v. CIT [1979] 118 ITR ITR 261 (SC).

Section 37(1), generally provides for allowance of the residuary business expenditure. Therefore, business expenditure is allowable u/s 37, the sole condition precedent being the existence of nexus with the purpose of business carried on - Coates of India Ltd. v. CIT [1994] 205 ITR 373 (Cal).

The expense in question was incurred

exclusively for business purposes of the assessee

was not personal in nature and

was revenue in nature.

Thus, an arbitrary disallowance on the basis adopted by the assessing officer while framing the assessment order for the AY 2010-11 is grossly unreasonable and un-called for and is contrary to the

Provisions of section 37(1) and

The principles enunciated in the various case laws of Supreme Court referred above

6.2 **Expenditure under consideration is on account of contractual obligation**

The appellant respectfully submits that the insurance cover for the employees and their family members is being extended in line with the contractual obligations undertaken by the appellant in terms of the appointment letters issued to employees. The relevant

extract of clause in the employment contract [for sample employment letters pl refer pages 65 to 74 of the accompanying paper book - sl no. 9] is as under:

"you shall be eligible for reimbursement of medical expenses and group medical insurance scheme for self and dependent family members as per rules of the company"

The above employment terms demonstrate that the payments made towards insurance premium for family members were purely towards the contractual obligations.

In the present age the benefits and facilities provided to the employees go a long way in keeping them happy and satisfied thus contributing to increase in productivity of employees. Therefore, the expense in question was incurred to further the business objectives of the assessee through having a more committed work force.

The coverage under the medical insurance policy is based on the declaration provided by the employees for the family members. [for sample declarations pl. refer pages 75 to 80 of the accompanying paper book - sl no. 10. The policy document is also enclosed at pages 81 to 96 of the accompanying paper book - sl no. 11]

6.3 Response to the observation of the Learned AO

In regard to the observation of the AO that "a further perusal of the list of the family members shows that this mechanism has been used by the assessee company, solely and exclusively to make payments on the medical insurance of the key management i.e. the directors and the Managing Director. A perusal of the list of persons with respect to whom the medical insurance premium has been incurred would reveal that the amount has been incurred for leave apart immediate family, towards the medical insurance of relatives like mother-in law of the managing director and sister of the other directors".

The appellant respectfully submits that there were only 3 instances where insurance premium was paid for the distant family members of the employees and that the premium paid for such persons aggregated to Rs.32,274 details of which are as under:

Name of the employee	Name of the family member covered	Relationship with the employee	Insurance Premium (Amount Rs.)
K. Subramanian	Visalam Gopalakrishnan	Mother-in-law	18,070
AC Goyal	Sushma Agarwal	Sister	7,102
AC Goyal	Anju Rani	Sister	7,102
	Total		32,274

The above sum of Rs. 32,274 has been included in the total premium paid of Rs. 67,456 considered at para 5 above which was offered as disallowance before the CIT(Appeals).

We may add that as per clause (iv) of the proviso to section 17(2)(viii), the reimbursement by the employer of the medical insurance premium paid by the employee

for himself or any member of his family is considered as a non-taxable perquisite. The said clause reads as under:

(iv) any sum paid by the employer in respect of any premium paid by the employee to effect or to keep in force an insurance on his health or the health of any member of his family under any scheme approved by the Central Government or the Insurance Regulatory and Development Authority established under sub-section (1) of section 3 of the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999), for the purposes of section 80D.

The existence of the above clause in regard to the taxability of medical insurance premium in the hands of the employee lends strength to the contention of the assessee that the said expenditure is recognized by the Income Tax Act itself as a valid expenditure to be incurred by the employer on the employee.

6.4 Section 40a(ia) pertaining to disallowance due to non-deduction of TDS on salary not applicable

The disallowance under section 40a(ia) of the Act in relation to non-deduction of tax on salary payment was introduced with effect from April 01 2015 Vide Finance (No.2) Act 2014 and as such was not applicable for the year under appeal.

7 Case laws relied upon by the appellant

The assessee relies on the following additional decisions in support of its claim that the expenditure has been incurred wholly and exclusively for the purposes of business and is an allowable expenditure under section 37 of Income Tax Act, 1961.

(a) CIT, Kerala v. Malayalam Plantations Ltd., (1964) 531TR 140

The term wholly refers to the quantum of expenditure while the term exclusively refers to the motive, objective and purpose of the expenditure. The term wholly and exclusively does not mean "necessarily" as it is for the assessee to decide whether any expenditure should be incurred in the course of his business. Such expenditure may be incurred voluntarily and without any necessity, and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction therefore under section 37(1) even though there may be no compelling necessity to incur such expenditure. It has also to be noted that the expression "for the purposes of the business" as it occurs in the section is wider in scope than the expression "for the purposes of earning profits." It may take in not only the day to day running of a business but also many other acts incidental to the carrying on a business

(b) CIT v. Edward Keventer (Private) Ltd. 197286 ITR 370

The legitimate needs of the business of the appellant are required to be considered objectively from the point of view of a businessman and not of the Revenue to determine

whether expenditure was wholly or exclusively laid out for the purpose of business and whether such expenditure was commercially expedient. The benefit derived by or accruing to the company must also be considered from the angle of a prudent businessman. The term 'benefit' to a company in relation to its business, it must be remembered, has a very wide connotation and may not necessarily be capable of being accurately measured in terms of pounds, shillings and pence in all cases. Both these aspects have to be considered judiciously, dispassionately without any bias of any kind from the view-point of a reasonable and honest person in business."

(c) CIT v. Laxmi Cement Distributors Pvt. Ltd. [1976] 1041TR 711 (Guj)

In this case, an employee of the assessee, sent abroad for training, died. Thereafter, the board of directors of the assessee passed a resolution to pay some compensation to the daughter of the deceased in recognition of the past services of the latter. The amount paid by way of such compensation was claimed as a deduction under Section 37 of the Income-tax Act, 1961. The claim of the assesses was rejected by the Income-tax Officer and the Appellate Assistant Commissioner on the ground that there was no scheme for, or practice of, such payments and that the assessee was not obliged to pay the same. The Tribunal, however, held on further appeal that the expenditure incurred was laid out wholly and exclusively for the business purpose of the assessee in order to maintain good relations between the employer and the employees and engender confidence in the management. Therefore, the said deduction was admissible under Section 37. On a reference, a Division Bench of the Gujarat High Court affirmed the decision of the Tribunal and observed as follows (at page 720) :

"In the last place, the concept of commercial expediency in the context of any payment made in similar circumstances must change with Changing times and the problem deserves a fresh look. As earlier pointed out, payment by way of retirement benefits or family pension is a well-accepted concept in modern times and if an employer makes a beginning and voluntarily expends money on payment of gratuity or pension or compensation to one or more of his employees or their dependents, without there being any compulsion, statutory or otherwise, taking notice of the altering pattern of the employer-employee relationship, then, the expenditure cannot but be treated as having been made to earn greater co-operation and loyalty of his employees in whose mind such a gesture would generate a legitimate expectation of being similarly treated. Law cannot take leave of realities and, under conditions prevalent in the mid-sixties, such expenditure must be taken to have been incurred wholly and exclusively for the purposes of the employer's business. "

(d) CIT v. Indian Molasses Co. (P.) Ltd. [1970] 78 ITR 474 (SC

The Supreme Court in the aforesaid case held that in the conspectus of the facts, it appears to us that it has been established that the amount provided for the payment of pension to the employee and after his death to his widow had been laid out or expended wholly and exclusively for the purpose of the business of the assessee. Legitimate

business needs of an assessee must be judged from the point of view of the business and not from the point of view only of the Revenue. With respect, we follow the decision of this court in Edward Keventer Pvt. Ltd. [1972] 86 ITR 370, which has been affirmed by the Supreme Court. We also accept the contentions made on behalf of the assessee that a provision for payment of pension to the widow of an employee is neither unusual nor unnecessary. Such provisions are in consonance with the modern trend. Employees have generally come to expect such provisions as their normal due for the services rendered to their employer. Even in Government service, provisions have been made for payment of pension to the widows of Government servants. The Income-tax Act, 1961, recognises this trend and has provided for superannuation funds for the benefit not only of the employees but also of their widows.

(e) Additional Commissioner of Income tax vs. Kuber Singh Bhagwandas [1979) 118 ITR 379 (MP)(FB) the Court

In this case the Court held that to decide whether a payment of money or incurring of expenditure is for the purpose of the business and an allowable expenditure, the test applied is of commercial expediency and principles of ordinary commercial trading. If the payment or expenditure is incurred to facilitate the carrying on of the business of the assessee and is supported by commercial expediency, it does not matter that the payment is voluntary or that it also enures to the benefit of a third party.

(f) Karam Chand Thapar [1986] 1571TR 212 (CAL.)

Counsel for the Revenue contended that the expenditure incurred by the assessee for bringing the dead body of late Karam Chand Thapar by air from Delhi to Calcutta was not in any way connected with the business of the assessee-company. It was no part of the assessee's business to bring the dead body of its chairman of the board of directors from Delhi to Calcutta. It was done for the benefit of the members of the family of the chairman and as such cannot be said to form part of the business of the assessee. However the High Court held that the expenditure incurred to have his body flown back by Airways while he was on business tour is incidental to business and an allowable deduction under Section 37(1) of the Income Tax.

(g) CIT vs. Supreme Motors Private Ltd. [1972] 84 ITR 1 (Delhi)

In this case of the facts were that the Chairman of the assessee-company had come from Jodhpur to Delhi on a tour of inspection, and while on such tour he died of heart failure. The company chartered a plane to have his body sent back to Jodhpur and incurred a sum of ~ 6,900 for that purpose. The question was whether the expenditure was incidental to the business carried on by the assessee and allowable as business expenditure. It was held that the expenditure incurred by the assessee was incidental to the business carried on by it and was allowable

(h) State of Madras v G J Coelho [1964] 53 ITR 186 [SC]

The SC in the case of State of Madras v. G.J. Coelho [1964] 53 ITR 186 (SC) held that every expense to discharge a personal obligation does not become a personal expense. Further the SC in the case of Commissioner of Income-tax v. Dhanrajgiriji Raja Narasingiriji [1973] 91 ITR 544 had stated that" it is not open to the department to prescribe what expenditure an assessee should incur and in what circumstances he should incur the expenditure. Every business knows his interest best".

8 Status of identical disallowance made in AY 2009-10

A similar disallowance was made by the AO in the assessment orderfor AY 2009-10. Against similar disallowance made the AO in AY 2009-10 on an appeal filed by the assessee, CIT Appeals VIII, vide order dated September 18, 2014 upheld only the disallowance of premium paid for distant relatives amounting to Rs.58,401 and allowed the claim of insurance paid for the family members of the employees aggregating to 1,032,768. [For copy of the order of CIT Appeals VIII for AY 2009-10 dated September 18, 2014 pI refer pages 97 to 118 of the accompanying paper book- sl no. 12.]

In the light of the above, It is respectfully submitted that the medical insurance premium expense should be allowed to the extent of Rs. 11,73,257 after disallowing the expenditure of Rs.32,274 in line with the decision of the CIT Appeals in relation to A Y 2009-10."

On the strength of above submissions, the ld. AR urged for allowing the appeal of the assessee.

5. On the other hand, the ld. DR relied on the order of the lower authorities and submitted that the lower authorities have rightly disallowed the claim of the assessee as business expenditure u/s. 37(1) of the Act. The assessee did not incur the impugned expenditure in the ordinary course of business. The case laws relied by the assessee are not applicable, being distinguishable on facts.

6. After hearing, the submissions of both the parties and going through the material available on record, we find considerable substance in the contention of the assessee. The record reveals that the assessee had paid the insurance premiums of the employees' family members in terms of employment Rules framed by the assessee-company there for. Therefore, it can hardly be said that the impugned expenditure were not incurred wholly and exclusively for the purpose of business, which is the real intent of Section 37(1) of the IT Act. The ld. Authorities below could not bring any evidence on record to substantiate that the payments so made by the assessee-company had no nexus with the business of the assessee. Even otherwise, it is not necessary that all the payments/expenditure incurred by the assessee should have direct bearing on earning of income, but some payments are also made under certain business expediency. In the instant case, The payments claimed to have been made by the assessee for the insurance premium of such members who have attained the age of 21 years or more or who are the remote relations of assessee have already been offered by the assessee to tax before the ld. CIT(A), as also noted in the written submissions above. The ld. Authorities below appear to have rejected the claim of the assessee that these payments were in the nature of perquisites to the employees as contemplated under sub-clause (iv) of section 17(2) of the IT Act, according to which any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee, shall be included in perquisites. However, in view of proviso (iii) & (iv) appended to this section clearly prohibit the application of section 17(2) in certain eventualities as contained in these provisos. In view of attending facts and circumstances of the case and the provisions of law, noted above, we do not find any justification in the findings

reached by the ld. Authorities below for rejecting the deduction of impugned expenditure claimed by the assessee. Therefore, in view of various decisions relied by the assessee and in the totality of facts and circumstances of the case, we do not find any justification to discard the impugned claim of assessee made u/s. 37(1) of the IT Act. Accordingly, the appeal of the assessee deserves to be allowed.

7. In the result, the appeal is allowed.

Order pronounced in the open court on 13th August, 2018.

Sd/- Sd/-

(Amit Shukla)
Judicial member

(L.P. Sahu)
Accountant Member

Dated: 13th August, 2018
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Copy of order forwarded to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*Commissioner*	*(4)*	*CIT(A)*
(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi