

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'B', KOLKATA  
VIRTUAL HEARING**

**[Before Shri J. Sudhakar Reddy, Hon'ble Accountant Member & Shri Aby T. Varkey, Hon'ble Judicial Member]**

**I.T.A. No. 381/Kol/2020  
Assessment Year: 2010-11**

***J.D. Jones & Company Private Limited.....Appellant***  
***9B, Wood Street***  
***2<sup>nd</sup> Floor***  
***Kolkata - 700 016***  
***[PAN: AAACJ 7932 R]***

***Vs.***

***Deputy Commissioner of Income Tax, Circle-6, Kolkata.....Respondent***

**Appearances by:**

*Shri S.M. Surana, Advocate, appeared on behalf of the assessee.*

*Smt. Ranu Biswas, Addl. CIT, D/R. appearing on behalf of the Revenue.*

Date of concluding the hearing : April 22<sup>nd</sup>, 2021

Date of pronouncing the order : May 5<sup>th</sup>, 2021

**ORDER**

**Per J. Sudhakar Reddy, AM:-**

This appeal filed by the assessee is directed against the order of the Learned Commissioner of Income Tax (Appeals) – 20, Kolkata, (hereinafter the “ld. CIT(A)”), passed u/s. 250 of the Income Tax Act, 1961 (the ‘Act’), dt. 26/02/2020, for the Assessment Year 2010-11.

2. The sole issue that arises for our consideration in this case, is the disallowance of the claim of Rs.23,69,443/-, incurred by the assessee towards fees paid to Babson College, USA, for a management trainee, Shri Karan Kanodia. The company has sponsored his four years degree course of business administration at Babson College, USA, under an agreement. The Assessing Officer disallowed this amount on the ground that (a) the expenditure cannot be treated as research & development expenses (b) there is no nexus between the expenditure of higher education for a management trainee and propagation of business of the assessee (c) the expenditure cannot be treated as business expenditure as it is incurred for future services to be obtained by the company.

On appeal, the ld. First Appellate Authority upheld the order of the Assessing Officer and held as follows:-

*“4.5. Perusal of these details reveal that Shri Karan Kanodia was simply 10<sup>th</sup> passed when he has been supposedly offered a job by the assessee company. He had applied for further studies at Babson College and his visa was issued on 17.06.2009. Thus for seeking admission in Babson College Shri Karan Kanodia must have applied at least 2-3 months in advance. Even for visa he must have applied at least 2-3 weeks in advance. Under the circumstances it is apparent that the company has not*

*chosen a course for Shri Karan Kanodia, as claimed by company in its submissions. Besides only a 10<sup>th</sup> passed. Shri Karan Kanodia did not possess any special qualification which may justify selection and sponsoring of his studies abroad by the company. If the company was bothered about improving its functioning it would have hired a qualified professional from some business College. Although the company has claimed that this would have cost it more but in reality the reimbursement of the educational expenses and the travel expenses of Shri Karan Kanodia is no less. Besides the actual skills of Shri Karan Kanodia would not have been tested at such a young age when he had no professional training. He had just finished his basic schooling when it has been claimed that he has been hired by the appellant company. On the other hand, if the company had hired trained professional then it would have at least known the feed back from the respective institute regarding the skill and acumen of that particular person. Normally private sector hires management trainees when they have completed their graduation and thus they are specialised in a particular field. Hiring somebody just after the person has cleared 10<sup>th</sup> exam would not ensure that the person has requisite skills suited to the needs of the company. After going through the documents submitted by the A/R it appears that Shri Karan Kanodia is related in some way with the director of the company and this is a ploy to justify the expenditure on his education abroad. The residential address of Allahabad, mentioned in Service Agreement, appears to be incomplete. Thus the expenditure on the education of Shri Karan Kanodia is not justified from the business point of view. Now coming to the assessee's submissions regarding the decision given by Ld. CIT(A)-7, Kolkata in subsequent year, i.e. for A.Y. 2012-13, with due respect I differ from the views of the Ld. CIT(A). Facts of assessee's case are similar to those discussed in JBM Industries Ltd. vs. CIT (Supra) and Indian Galvanics Cyrium Foils Ltd. (Supra). The judgements cited by the appellant, in support of its contentions, are distinguishable on facts. In all the cases, relied upon by the assessee, the persons concerned had been working with company and they all were at least graduates. A person's specialization in any field decides his utility for a particular job. Specialization comes by experience or through education/training. If only educational background is considered, then the person should be at least graduate in a particular stream to assess his suitability for a particular job. But in the present case, the person has just finished his basic schooling only. Hence, the facts of assessee's case are distinguishable from the cases relied upon by the assessee. On the other hand it is similar to the cases of JBM Industries Ltd. (Supra) and Indian Galvanics Cyrium Foils Ltd. (Supra). Hence, assessee's contentions are not acceptable.*

*4.6. In view of the discussion above the disallowance of Rs.23,69,443/- is confirmed."*

3. Aggrieved, the assessee is in appeal before us.
4. The Id. Counsel for the assessee, Shri S.M. Surana, submitted that (a) expenses were claimed erroneously under a wrong head of expenditure and this cannot be the reason for making a disallowance (b) sponsorship expenses can be treated as business expenditure and for this proposition, he relied on certain case-law (c) the expenditure in question were incurred on an unrelated party for the purpose of business improvement and hence has to be allowed. (d) that Mr. Karan Kanodia, is not related in any way to any of the directors of the assessee company and that, subsequent to the education obtained by him, Mr. Karan Kanodia is serving the assessee company till date for more than five years with a minimum salary of Rs.50,000/- per month only. Thus, the expenditure should be allowed. He relied on certain case-law in support of his proposition and distinguished the case-law relied upon by the Id. CIT(A).
5. The Id. D/R, on the other hand, opposed the contentions of the assessee and submitted that, expenditure on research and developments cannot be the one which is

incurred for management trainees. He relied on the findings of the Assessing Officer as well as the Id. CIT(A) and submitted that, the same be upheld.

6. We have heard rival contentions. On careful consideration of the facts and circumstances of the case, perusal of the papers on record, orders of the authorities below as well as case law cited, we hold as follows:-

7. The service agreement was entered into between the company and the assessee. Some of the relevant clauses of this service agreement dt. 24<sup>th</sup> July, 2009, are highlighted hereinbelow:-

*“1. That during the period of abroad education of the trainee, the Company shall bear and pay all expenses including Admission fee, term fee, hostel fee and / or any other expenses payable to the aforesaid Institution.*

*2. That during the period of four years of training the Company shall reimburse traveling expenses of the Trainee for coming to India to his hometown twice in the block of four years.*

*3. That after the completion of the training the trainee shall serve to the company for the minimum period of 60 months as “Management Consultant\*”, which will include functions assigned to him from time to time by the Board of Directors of the Company The service period of 60 months will commence after 30 days from the date of completion of his education and training program as mentioned hereinfore.*

*4. That during period of his service to the Company, the trainee shall get monthly remuneration of Rs. 25000/- per month and get annual increment and enjoy the perks as per the Company rules.*

*5. That the said trainee shall discharge his duties conform to and comply with all the rules and regulations of the Company and Government, and shall not do or cause to be done anything against the interest of the Company*

*6. That the said trainee shall, during the said terms, employ himself efficiently and diligently and to the best of his ability and shall devote his whole time and attention to the WORK generally carry out duties and work as assigned to him and shall obey and comply with all lawful order and directions given to him by the Board of Directors of the Company and shall honestly, diligently and faithfully serve the Company and use his utmost endeavor to promote the interest of the Company.*

*7. That the said trainee shall be just and faithful to the Company in all matters and shall not at any time except under legal process, divulge to any person whatsoever and shall use his best endeavors to prevent the publication or disclosure of any trade secret or software development process or any information concerning management decision of the Company or of its dealings, transactions, or affairs which may come to his knowledge.*

*8. That, this agreement shall be determined upon the death of the said trainee and in that event, his legal heirs, executors, and administrators shall be entitled to a proportionate part of his remuneration and other legal dues computed till the date of his death and the employee's heirs executors and administrators shall not be liable to pay any liquidated damages.*

*9. That, if at any time during his employment, the said trainee is found guilty of misconduct or any willful breach or continuous negligence of the terms of this agreement or dereliction of the duties and / or instructions given to him from time to time by the*

*Company, the Company may without prejudice to any other act on as may be called for without any notice in payment in lieu of any notice, put an end to and determine the employer and said trainee with the Company, without prejudice to the above. The trainee shall be deemed to have brought about such a situation by his misconduct compelling the Company to put an end to his services and the employee shall therefore, continue to be liable for all losses / damages to the Company.*

10. *That the employer shall not ordinarily, terminate the services of the employee during the agreed tenure of 60 months, but if it becomes necessary to dispense with the services of the employee for any reason, the trainee shall not be entitled for any commensuration or carnages.*

11. *That the said trainee shall not leave the service of the Company until the completion of the agreed period of 60 months. If he leaves services in breach of this agreement, the following conditions shall be attracted.*

- A. *That the said trainee shall pay amount of Rs. 100.00 Lacs (Rupees One hundred Lacs only) to the Company as liquidated damages for premature termination of the agreement at the instance of the trainee. The said amount has been mutually agreed by and between the parties considering the circumstances of the case and also all the facts including the fact that the loss that will be suffered by the Company on this account that cannot be ascertained in terms of money and it shall not be open to the trainee in the event of any claim being made against him under his agreement, to plead that the amount of damages is excessive or that it tantamount to penalty or that it is otherwise irrecoverable according to law. The parties mutually agree that a sum Rs. 100,00,000/- shall be the minimum liability of the employee in the event of the breach of this agreement by him and the Company shall be entitled to recover the said sum in accordance with the terms of this agreement.*
- B. *That in addition to the liquidated damages, the said employee shall pay to the Company as specific damages, a sum of money, computed as damages actually suffered and attributed directly or indirectly, to the premature termination of agreement at the Instance of the said employee by his leaving the service of the company due to misconduct or otherwise, before the completion of the tenure specified herein earlier.*
- C. *That the said trainee shall not take up whole time or part time employment with any other company engaged in the similar businesses, for a period of 12 months even if he leaves the services of the company after paying liquidated damages and fulfilling all conditions as stipulated in this agreement.*
- D. *That the said trainee shall undergo training in India or abroad as and when required by the Company at its cost. In case the trainee is required to take further training abroad, and is so sponsored by the Company, the trainee would be required to sign a separate agreement.*
- E. *That in the event of any dispute or difference arising between parties hereto either during subsistence of this agreement or afterwards relating to this agreement, the same shall be referred to the Arbitration of Managing Director of the Company whose decision shall be final and binding on the parties. The provisions, of the Indian Arbitration Act, 1996 or any statutory modification or re-enactment thereof for the time being in force shall be applicable. KOI.KATA courts alone will have exclusive jurisdiction in all matters connected with this agreement."*

8. The genuineness of this agreement cannot be doubted in the absence of any adverse material. The fact is that, Mr. Karan Kanodia, is not related to any of

the Directors of the assessee company. Mr. Karan Kanodia, is working for this company till date for more than a period of five (5) years after completion of his education and training on a small pay of Rs.50,000/- p.m. only.

9. The Hon'ble Jurisdictional High Court in the case of *M/s. Gournitye tea & Industries Ltd. versus Commissioner Of Income Tax Circle-I, in ITA No. 249 of 2005, order dt. 24/06/2010*, has held as follows:-

*"On careful reading of all those decisions we could find that any expenditure incurred on account of training and imparting higher education in abroad or even inside the country are treated to be business expenditure provided after completion of their study they have contributed to the business activities of the assessee company irrespective of the fact whether the company has continued business activities or earned profit.*

*In the background of the aforesaid position of law we now examine about the fact herein. As we have recorded so also it is admitted position that the company by valid resolution of the Board dated 21.12.1998 had appointed a trainee and this resolution was never questioned by anyone else. Therefore, it was not open for the Revenue Authority to question the legality, validity and propriety of the same. This appointment of trainee has to be accepted. We are of the view that the Learned Tribunal has made a little guesswork ignoring the aforesaid resolution appointing him as a trainee. Subsequently by another resolution taken on 21.9.1999 it has been decided that the said S. Kalyani who has been appointed as trainee shall be sent to USA for higher study to acquire special knowledge in modern technology in the field of agriculture for augmentation of production, improvement of quality and also for betterment of marketability and profitability. His duration of study and training was for a period of five years. The Board unanimously adopted that entire expenditure has to be borne by the company at the first instance, however, if the said S. Kalyani on coming back after completion of the education from abroad will be obliged to resume service in the company as a technical executive at least for ten years. In case of default of the said condition the said S. Kalyani has to pay back the entire expenses borne by the company with interest @18 per cent per annum.*

*It appears that a written agreement was signed and executed to this effect and the same was produced before the assessing officer, Commissioner of Income Tax (Appeal) as well as before the Tribunal. The Commissioner of Income Tax (Appeal) had duly noted the aforesaid documents and accepted the same. Unfortunately the Learned Tribunal did not discuss legality and validity of those documents nor discarded the same expressly and the Learned Tribunal went on presuming adversely that a son of a President cannot become a trainee or expenditure for his higher education could not be treated to be relatable to the expenditure of the company. We are unable to accept the logic of the Learned Tribunal particularly when we noticed those resolutions are unchallenged and unimpeachable and those have been carried into effect there is no reason to discard the same. Those documents were not created, it was a contemporaneous one and pursuant to the said*

*resolution followed by an agreement the trainee went for abroad training and education.*

*Simply because a trainee happens to be the son of the President one cannot jump to the conclusion that appointment itself is an appointment smacks of nepotism. It is settled position of law the company particularly being a limited one and a separate juristic entity any director, shareholder or any officer for that matter (are) is completely different entity and their interest cannot be equated with the interest of the company.*

*It appears that subsequently on fact that said S. Kalyani after completion of the higher study for five years joined the company and he was appointed as President of the Company on settled remuneration and perquisite with effect from 15 May 2004 and since then he had and still has been functioning as such. Under these circumstances it cannot be said anything else except business expenditure incurred on account of the higher study during his traineeship and it was relatable and is still related to the expenses of the company's business as such deduction can safely be allowed under [Section 37\(1\)](#) of the said Act. The decision would have been different, had he not joined after completion of his education in the company and realisation of the amount with interest @18 per cent would have been resorted to, this expenditure in that case could not have been brought within the purview of business expenditure. We are of the view that learned Tribunal unfortunately in spite of its attention being drawn to the aforesaid documents at a subsequent stage on miscellaneous application and at the initial stage, overruled the same and proceeded in a different direction. We, therefore, are inclined to and hereby delete the disallowance of expenditure incurred on account of higher education in abroad."*

10. Applying the propositions of law laid down in the above case law to the facts of the case on hand, we are of the view that the expenditure in question has to be allowed. Booking expenditure under a wrong head of expenditure cannot be a ground for disallowance. The expenditure was incurred for the purpose of business and hence the same is allowed.

11. In the result, appeal of the assessee is allowed.

***Kolkata, the 5<sup>th</sup> day of May, 2021***

***Sd/-***  
**[Aby T. Varkey]**  
 Judicial Member

***Sd/-***  
**[J. Sudhakar Reddy]**  
 Accountant Member

Dated : 05.05.2021  
 {SC SPS}

*Copy of the order forwarded to:*

**1. J.D. Jones & Company Private Limited**  
**9B, Wood Street**  
**2<sup>nd</sup> Floor**  
**Kolkata – 700 016**

**2. Deputy Commissioner of Income Tax, Circle-6, Kolkata**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches