

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD
BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT.SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.385/Ahd/2019
Assessment Year :2015-16

Snehal Mahendrakumar Shah 1-B, Avantika Society Nr.Naranpura Railway Crossing Opp: SBI, Narangpura Ahmedabad PAN : ACPS 5850 L	Vs.	DCIT, Cir.4(2) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/(Respondent)
Assessee by :	Shri Bandish Soparkar, AR
Revenue by :	Shri Atul Pandey, Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **24/06/2022**
घोषणा की तारीख /**Date of Pronouncement**: **15/09/2022**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the ld. Commissioner of Income-Tax(Appeals)-4, Ahmedabad [hereinafter referred to as "Ld.CIT(A) under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) dated 7.1.2019 pertaining to the Asst.Year 2015-16.

2. Sole issue in the present appeals relates to claim of education expenses of the daughter of the assessee, which was denied by the authorities below holding the same to be personal in nature, and alternatively capital in nature.

3. The ground raised by the assessee in this regard reads as under:

“1. The Learned CIT(A) has erred in confirming the addition as personal expenses to the income made by the learned Assessing Officer in respect of "Education Expenses" amounting to Rs.23,52,809 for Miss Sunaina Shah who is an employee of the assessee's architectural firm for her further studies in abroad without appreciating the facts of the case and judicial precedents on similar facts and considering the same as personal expense.”

4. The facts relating to the said expenses being that the assessee, Sh.Snehal Mahendra Kumar Shah, is an architect and interior designer and the educational expenses of his daughter incurred by him, amounting to Rs.23,52,809/-, were in relation to advanced studies in the field of architecture from “Association School of Architecture, London, U.K”, his daughter, Ms.Sunaina Shah, having cleared her Bachelors degree in architecture from CEPT University in the year 2015.

5. The contentions of the ld.counsel for the assessee before us was that the said expenses had been incurred wholly and exclusively for the purpose of the business of the assessee, and had not been incurred for the reason that Ms.Sunaina Shah was the daughter of the assessee. In this regard, he emphasised the fact that the assessee’s daughter was a highly qualified architect working in the assessee’s firm and wanted to pursue higher education; that she had studied in various prominent institutions , interned with globally acclaimed architects and had a huge repertoire of knowledge and expertise. That she had agreed to work with the assessee for five years after completing her education. It was pointed out that her knowledge gained in the process had substantially contributed to the business of the assessee’s firm. That therefore the expenditure was incurred solely for the purpose of the business of the assessee, and there was no personal reason and intention behind incurring the same. In this regard ld.counsel for the assessee drew our attention to the submissions made before the ld.CIT(A) pointing out

that she was an highly qualified architect who had sufficient degree from various prominent universities of the world, as given at page no.4.4 of the order.

“4.4. Ms. Sunaina is a Highly qualified architect and has been conferred and holding the following professional degrees:

- *Bachelor of Architecture from CEPT University in the year 2015 Copy of degree certificate is attached herewith as Annexure-2A (page-27). The Ahmedabad Education Society (AES) established the Centre for Environment Planning & Technology (CEPT) in the year 1962 with the inception of School of Architecture (SA) through grant-in-aid from the Government of Gujarat.*

CEPT University focuses on understanding, designing, planning, constructing and managing human habitats. Its teaching programs aim to build thoughtful professionals and its research programs deepen understanding of human settlements.

- *"Master of Arts" degree in "History and Critical Thinking in Architecture" from The Open University. UK in the year 2015. Copy of degree certificate is attached herewith as Annexure-2B (page-28).*

The Open University, established by Royal Charter, UK on 23 April 1969, is the leading university for flexible, innovative and world-leading research in the United Kingdom and in over 100 countries worldwide. The Open University is the UK's largest academic institution and a world pioneer in learning.

- *"Master of Science" degree in "Advanced Architectural Design" from Columbia University. New York in the year 2017. Copy of degree certificate is attached herewith as Annexure-2C (page-30).*

Columbia University is one of the world's most important centers of research and at the same time a distinctive and distinguished learning environment for undergraduates and graduate students in many scholarly and professional fields.

Columbia University was founded in 1754 as King's College by royal charter of King George II of England. It is the oldest institution of higher learning in the state of New York and the fifth oldest in the United States.

- *Holds certificate of Registration from Council of Architecture in India for the period June 2015 to December 2016. Copy of the said registration is attached herewith as Annexure-2D (page-31).*

The Council of Architecture (COA) has been constituted by the Government of India under the provisions of the Architects Act, 1972, enacted by the Parliament of India.

The Act provides for registration of Architects, standards of education, recognized qualifications and standards of practice to be complied with by the practicing architects.:

6. Further our attention was drawn to para-4.5 of the impugned order reproducing submissions of the assessee to the effect that she had worked/interned with world-class architects, adding to her credentials:

"4.5. Prior to joining the firm and after obtaining the above degrees, Ms. Sunaina has worked as intern / employee of the world class Architectural firms which add to her credentials.

- *Internship with Architects "Tod Williams Billie Tsien" in New York during the period 02.05.2011 to 28.10.2011 for 27 weeks.*

The firm - "Tod Williams Billie Tsien" started during 1977, focuses on work for institutions: museums, schools, and not-for-profits. They are at the moment designing the Barrak Obama's Library - one of the most prestigious projects of the USA. He has built the TCS, Mumbai building in India. Ms. Sunaina may receive work upon his recommendation in India, if any in future.(page-35)

- *Worked with "shubhraraje built environments" in Ahmedabad during the Fall and Winter of 2013.*

Shubhra Raje is an architect and educator who is the founder-principal of shubhraraje built environments, an inter-disciplinary design and research practice based in Denver (USA) and Ahmedabad (India).

Projects undertaken by the said firm range from community networks in Aurora CO, rehabilitating masonry structures in Egypt to the design of art spaces, single and multi-family housing, as well as social and educational institutes - thereby engaging diverse issues, multiple constituencies and varying scales from interior design and architecture to community design and conservation.

- *After completion of her Masters at AA and Columbia University, Sinaina had undergone Internship with "Mario BottaArchitetti" from January, 2016 to May, 2016.*

Working since he was 16, Swiss architect Mario Botta has become a prolific and well known crafter of space, designing a huge array of places of worship, private homes, and museums, perhaps most notably the San Francisco Museum of Modern Art and the Church of San Giovanni Battista in Mogno, Switzerland.

*Mario Bota is one of the rare living architects who has two postage stamps to his credit. (Photo of the stamp enclosed) (page 36-37)
Copy of internship certificate for all the above mentioned Architectural Firms is attached herewith as Annexure-3 (page-32-33-34).*

7. Our attention was drawn to para 4.10 of the CIT(A)'s order where submissions of the assessee pointing out various assignments which the assessee firm had procured for the reason that Ms.Sunaina Shah was on their pay-role found mention.

From Para-4.11 it was pointed out that she was working actively on two research publications which were being brought out by the assessee.

8. Referring of the above, it was pointed out that the expenditure incurred was purely for commercial considerations and the assessee had obtained business gains out of the same. Our attention was drawn to the submissions of the ld.counsel of the assessee in this regard at para 4.13 of his order as under:

"4.13. With such advanced education, she was sent outside the country for acquiring higher qualification, which would improve the services, qualitative standards, global outlook for design and structures while serving the clients. Merely because she happens to be the daughter of the owner of the business, it cannot be said that the money is just spent by her parents out of love and affection for higher education of their daughter. She was an employee of the assessee, in the field, in which, she has acquired degree and in fact, she continued with the firm at a minimum remuneration as compared to contemporaries even after obtaining and holding "two masters, one bachelor" degrees and hands on experience with internationally recognised and famous professional organisations and projects. Thus, after acquiring the additional knowledge, she has come back and she is working with the assessee. Therefore, there is a direct nexus between the expenses incurred towards her education with the business, which the assessee is carrying on."

9. The ld.counsel for the assessee further referred to various decision of Hon'ble High Courts holding the expenses incurred on the education of children of the directors of company as being allowable for being wholly and exclusively incurred for the purpose of the business of the assessee, which are as under:

- i) Mallige Medican Centre, 375 ITR 522 (Kar)
- ii) Aswathanarayan & Eswara, 129 taxmann.com 111(Mad)
- iii) Aswathanarayana & Eswara, 97 taxamnn.com 572(Mad)

- iv) Kostub Investment Ltd., 365 ITR 436 (Del)
- v) UP Asbestos Ltd., 260 CTR 194 (All)
- vi) Harish Narinder Salve, 178 ITD 80 (ITAT-Del)

10. Reference was also made to the decision of Hon'ble Delhi High Court in the case of Natco Exports P.Ltd. VIT, ITa No.150/2012 for the above proposition.

11. The ld.DR relied on orders of the authorities below contending that despite whatever has been contended by the ld.counsel for the assessee, primary purpose for incurring this expenditure was the relationship between the assessee and Ms.Sunaina Shah, of father - daughter, and therefore, it was purely a personal expenditure of the assessee, and had rightly been disallowed by the authorities below. Our attention was drawn to the findings of the ld.CIT(A) at para-4.1 of his order as under:

"4.1 The ground no.2 is relating to disallowing the amount of Rs.23,52,809/ incurred as Education Expense for Miss. Sunaina Shah for her studies aboard, treating this expenditure personal in nature. The payment of expenditure has been done through banking channel and i.e. not the contention of either party. No doubt expenditure on education of daughter has happened but the issue is allowability of the same against the professional income earned by the father(Snehal Shah, architect). The appellant has argued that his daughter(Sunaina Shah) has got professional degree which is helping the business at subsequent period. There was understanding with her that she would work for appellant's business for five years after the degree. It is further contended that she is not drawing the salary equivalent to her qualification from the appellant's business at this point in time. A copy of agreement of work dated August, 2014 has been filed at page 40 of Paper Book. This agreement is signed on plain paper by father and the daughter. The particular date is discernible from this Annexure-5(page 40). Therefore, authenticity of this personal communication is not proved because of lack of third party independent credible evidence. The appellant has relied on the ratio of following case laws:

- i) Karnataka High Court in case of Mallige Medical Centre (P) Ltd. vs. JCIT*
- ii) High Court of Karnataka in case of CIT Vs. RAS Information Technologies (P) Ltd. (2011) 238 CTR 0076 Hi) High Court of Bombay in case of Sakal Papers Pvt. Ltd. vs. CIT (1978) 1978 CTR 0318 (Bom) iv) Calcutta High Court in the case of Hindustan Aluminium Corporation Ltd vs CIT*

(159ITR673) v) Madhya Pradesh High Court in the case of CIT vs Kohinoor Paper Products (226 ITR220) vi) Madhya Pradesh High Court in CIT vs Naidunia News & Networking (P) Ltd. (210 Taxmann 73)

The appellant has tried his best to create evidence so as to claim the expenditure on daughter's education. The argument is not accepted for following reasons:

a) This is an appropriation of income and not expenditure to earn income for A.Y. 2015-16. The appellant is free to use his income after paying the taxes on it, may it be on education of children or visit abroad for sight-seeing.

b) Without admitting, even if it is spent for progress of appellant, it is resulting into postponement of tax liability so far impugned A.Y. is concerned and the same is not acceptable as per prevailing law and practice of IT. Act, 1961.

c) Without admitting, even if it is proved that the business of the appellant is getting benefitted after a lapse of time then this expenditure is "Capital Expenditure" and in no way can be treated as "Revenue Expenditure" in the year under consideration.

The appellant could not rely on any judgment either from Hon'ble ITAT, Ahmedabad or Hon'ble Gujarat High Court. The judgments relied by the appellant have been perused and I don't find any judgment on the person going abroad for learning architect. Also these cases are the cases related to corporate assesseees which are governed by many other regulatory authorities. Therefore, instant case is case of individual spending money on education of a daughter cannot be compared with that of corporate entities. The decision making in instant case is a matter of convenience having no outside interference, hence lacks application of independent mind. As a result of it, these case laws are distinguished. I conclude that it is an act of excessive tax planning which can easily be called an attempt for tax evasion."

12. We have heard both the parties. The issue to be adjudicated is whether the expenditure incurred by the assessee on the education of his daughter in the field in which the assessee was in business i.e. in the field of architecture, could be claimed as expenditure incurred for the purpose of the assessee.

13. The emphasis of the argument of the Ld.Counsel for the assessee before us being that the primary intention behind incurring the expenditure was to utilize the advanced knowledge and

experience of the daughter of the assessee for advancing the business of the assessee. For this purpose our attention has been invited to the various qualifications and degrees earned by the daughter of the assessee in this field of architecture and also the vast experience gathered by her by interning with various prominent and globally acclaimed architects. Emphasis has also been laid on the contract entered with her for rendering services for a period of five years ,after completing her education with the assesses firm.

14. We have considered all these facts and we have given our thoughtful consideration to the issue before us. We are not convinced with the contentions of the Ld.Counsel for the assessee.

15. What is not to be lost sight of is the very pertinent fact of the relationship between the assessee and Ms.Sunaina Shah – that of father and daughter (parent-daughter). In Indian society, it is the pious and moral obligation of parents to maintain their children till they are independent. Also a very important feature of the Indian society is family run businesses/profession, where from generation to generation the family carries on the same profession or business. Therefore, a doctor's children preferably become doctors and so on in other professions and businesses also. It is a very prominent feature in our society where majority of the business/professions are all family run and this legacy is handed down from one generation to another. Primary purpose, therefore, for incurring expenditure on the education of the children in the family is therefore to maintain and ensure business to remain in the family itself, from generation to generation and thus ensuring the fruits of hard work of the previous generations to remain and be enjoyed by the family itself.

16. Considered in this back-drop, the expenditure incurred by the assessee on the daughter's education in the present case before us is primarily on account of personal relationship of father and daughter. The facts demonstrate that the daughter completed her Bachelors degree in architecture in the impugned year itself, i.e A.Y 2015-16, being awarded her degree in January 2015,(P.B 118) and immediately on completion of her Bachelors course she left for her higher education for obtaining Masters degree from London joining the 2014/15 programme of Architectural Association of Architecture, London (P.B 129-130) ,being a 12 months programme with the degree awarded to her on completion on 26th October 2015 (P.B 119-120). All other qualifications mentioned by the Ld.Counsel for the assessee were only subsequently acquired by the daughter of the assessee. Therefore the studies undertaken in London were primarily in continuation of her architectural studies. At what point of time the daughter of the assessee was working for the assessee is not coming out from the facts as before us.

17. The contract entered with the daughter to work with the assessee (P.B 131) firm lacks authenticity and appears to be an after-thought since, the contract clearly mentions the daughter to be a citizen of America and she was contracted to work with the assessee firm for five years, that too after completing all her studies which she intends to do in USA. The contract mentions this agreement being entered to pay back the expenses incurred on her education by her father, as she was contracted to work on minimum wages and not actual salary. This is definitely not a normal contract which any father would enter with his daughter and the purpose appears to be to receive back in terms of her services what was paid by her father, the assessee, for her education. This in itself shows that education expenses were not incurred with the intention of

furthering the business of the assessee but out of moral obligation as a father and the purpose of contracting her services for five years was strangely enough only to receive back what was paid for her education in terms of services rendered by her at lesser than normal rates. The contract is just an after-thought which not even binds the daughter for a reasonable period to contribute substantially to the assessee's practice.

18. Further whether the assessee had ever incurred such expenditure on the education of any other employee in this firm, either in the past or in the future, has not been brought to our notice, so as to give weightage to the contention that such education expenses were incurred primarily with the intention of promoting its business or profession.

19. It was merely because these expenses were in relation to the daughter of the assessee that they were incurred by the assessee, and not dominantly because they were for the purpose of business of the assessee firm. Even if the daughter of the assessee was pursuing any other course, the father was morally bound to spend on the education of his daughter. Therefore, the fact that the daughter pursued the very same profession in which the father was, was not a material fact for incurring the expenditure. As also stated above by us, that the business of the assessee remained in the family alone, was also a major contributing factor for the father to incur this expenditure. Therefore, the primary and dominant purpose for incurring this expenditure was personal consideration and not professional consideration.

With the logic advanced by the Ld.Counsel for the assessee, every professional firm or business, incurring educational expenses for their progeny/ children would all claim the same as if for

furtherance of their business, but it is not the case. The primary motive for incurring the expenses is to continue to carry the legacy of business and profession in the family and is purely personal in nature.

20. In view of the above, we have no iota of doubt in holding the impugned expenditure as personal and not allowable therefore as business expenditure.

21. The case laws relied on by the assessee have all been rendered in different set of facts where expenses were incurred by corporate assesses on the children of the directors or of the chairman of the company who were noted to have contributed to the business of the assesses also. It was in these circumstances that the expenses were held to be allowable. The facts in the case of Harish Salve (supra) is different where the issue was scholarship paid to two students in terms of scholarship agreement entered into by the assessee with the institute where the students were studying. The case did not involve any personal relationship as in the present case before us.

In view of the above, we do not find any infirmity in the order of the Id.CIT(A) in disallowing the claim of education expenditure of the daughter of the assessee amounting to Rs.23,52,809/- to the assessee. This ground of appeal of the assessee is rejected.

22. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Court on 15th September, 2022 at Ahmedabad.

Sd/-
(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 15/09/2022