

**आयकर अपीलीय अधिकरण, "एच" खंडपीठ मुंबई**  
**INCOME TAX APPELLATE TRIBUNAL,MUMBAI-"H",BENCH**  
सर्वश्री राजेन्द्र, लेखा सदस्य एवं संदीप गोसाई, न्यायिक सदस्य  
**Before S/Sh. Rajendra,Accountant Member & Sandeep Gosain,Judicial Member**  
**आयकर अपील सं./ITA No.3069 /Mum/ 2014 ,निर्धारण वर्ष/Assessment Year-2004-05**

Income tax Officer Ward-8(2)(1) Room No.212, 2 <sup>nd</sup> Floor Aayakar Bhavan, M.K. Road Mumbai-400 020	M/s. Haldyn Glass Gujarat Ltd. 9, Gayatri Commercial Complex Mittal Estate, Andheri Kurla Road Marol Naka, Andheri (E) Mumbai-400 059 <b>PAN No.AAACH 1434 J</b>
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(अपीलार्थी /Assessee )

(प्रत्यर्थी / Respondent)

**निर्धारिती ओर से/Assessee by**

**:Sh. Piysh Chaturvedi-AR**

राजस्व की ओर से/ **Revenue by**

**:Ms. Kusum Bansal-DR**

**सुनवाई की तारीख/ Date of Hearing**

**: 24- 11 -2015**

घोषणा की तारीख / Date of Pronouncement

**: 01.01.2016**

**आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश**

**Order u/s.254(1)of the Income-tax Act,1961(Act)**

**लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-**

Challenging the order dated 12.2.2014 of CIT(A)-17, Mumbai the Assessing Officer (AO) has filed the present appeal.

Assessee-company,engaged in the business of glass bottles,filed its return of income on 1. 11.2004,declaring total loss of Rs.52.97 lacs.The AO completed the assessment u/s.143(3)of the Act,determining the income of the assessee at Rs.6.31 lacs.

2.Effective ground of appeal is about deleting disallowance of Rs.16,55,000/- being reimburs-ement of educational expenses of one of the directors.During the course of assessment proceedings,the AO found that the assessee had paid an amount of Rs.16.55 lacs for training of one of the directors,Tarun Shetty,the son of chairman and the MD of the company.Vide his order sheet entry dt.15.11.06,he directed the assessee to file full details/justification, explana -tion to substantiate the claim.Afterr considering the submission of the assessee,dt.22.12.2006, the AO held that there was no agreement between the company and Tarun Shetty,that the resolution did not mention any approval for the education to be undertaken abroad,that it only mentioned approval for reimbursement of expenses,that duration and details of the course were not filed, that it was not proved that the course undertaken by Tarun Shetty was suitable for the needs of the company. He referred to the decision of R.K.K.R. Steel (P) Ltd. (258 ITR 306)and held that expenditure,amounting to Rs.16.55 lacs was not incurred wholly and exclusively for the purpose of business.Finally,he made an addition of the said amount to the income of the assessee .

3.Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority(FAA).Before him, it was argued that the AO had not doubted incurring of expenditure,that Tarun Shetty was a degree holder having experience in the Glass manufactu -ring industry,that he was working in the field for the last three years that he was sent for further study in business management subject to the condition that after coming back he would serve the company at least for four years,that in case of breach he was liable to

reimburse the entire expenditure incurred by the assessee, that there was a direct nexus between the expenditure incurred and the business of the assessee, that the expenditure was incurred wholly and exclusively for the purpose of business and was eligible for deduction u/s.37 of the Act, that Tarun Shetty had received degree from university of Sydney, that he was a first class graduate, that he took the company to new heights and the net profit of the company increased substantially, that the Board of directors on 31.7.2002 unanimously approved to sponsor the higher education of Tarun Shetty, that the resolution passed by the Board of directors was forwarded to ROC along with the minutes, that the assessee was a listed company.

After considering the submission of the assessee and the assessment order, the FAA held that the AO could not put himself in the armchair of the businessman or position of the Board, that no businessman could be compelled to maximize his profits, that the allowance was in the nature of reimbursement of expenses given to Tarun Shetty by the assessee, that the expenditure was exempt in view of the provisions of section 10(14) r.w. Rule-2BB(1)(e) of the Income tax Rules 1962(Rules). Finally, he allowed the appeal by the assessee.

**4.** Before us, the Departmental Representative (DR) supported the order of the AO and stated that FAA has admitted additional evidences and had not afforded a reasonable opportunity of hearing to the AO, that there was no justification for making payment of education of one of the directors. The Authorised Representative (AR) relied upon the order of the FAA and stated that Tarun Shetty had joined the company after completing the MBA degree, that copy of the Board of resolution was sent to the AO by the FAA and had obtained a report from the AO in that regard. He referred to the case of M/s. Jet Speed Audio Pvt. Ltd. (ITA/ 1706/ Mum/2009 and ors-AY2005-06 to 07-08 dt.11.12.13).

**5.** We have heard the rival submissions and perused the material before us. We find that the assessee had reimbursed the expenditure incurred on education of one of the directors, that Tarun Shetty had gone to Australia and completed his MBA, that he joined the company as required by the resolution of Board of directors, that he was a good student and had knowledge of the working of the company. It is not uncommon for companies to reimburse expenditure incurred on education of directors.

Here, we would like to refer to the case of Sakal Papers Pvt.Ltd.(114 ITR 256). Facts of the case were that the assessee, a closely-held company with two shareholders (husband and wife), both directors, published a leading Marathi newspaper. Their daughter, who was a Master of Arts with English and French as special subjects, worked in the editorial department of the paper from September, 1955, starting as an apprentice. In pursuance of a resolution of the directors the daughter was sent to U.S.A. in September, 1960, for specialised education in journalism and business administration, which the directors believed would be good for the progress of the paper. She attended the Graduates' School of Journalism at Columbia University in New York and secured the degree of Master of Journalism and thereafter spent three months to obtain practical training in printing and lithography. On her return from U.S.A., the daughter once again joined the editorial department of the company and was still working with the company. There was, however, no agreement between her and the company binding her or committing her to serve the company for a specified period of years. During the years 1960, 1961 and 1962, an expenditure of Rs. 29,654 was incurred in connection with her trip to U.S.A., which included passage money and expenses incurred prior to her departure. Out of this amount a sum of Rs. 6,000 was claimed by the assessee-company as deduction for the AY.1961-62. The Income-tax Officer disallowed this amount on the grounds: (1) that but for her relationship with the directors of the company, the

daughter would not have been sent abroad, (2) that when facilities for such education were available in India, it was not expedient to incur such large expenditure on foreign education, (3) that as the paper was a Marathi newspaper, her proficiency in the two languages in which she specialised for her M.A., degree and her further foreign training could not be regarded as useful for the paper, and, therefore, the expenditure was not incurred for the company's business but was only an amenity granted to a relation of the directors. On appeal, the FAA agreed with the view expressed by the Income-tax Officer, but, however, allowed the expenses as a proper revenue deduction. On appeal by the revenue, the Tribunal found that the selection for training in U.S.A., of the daughter could not be attributed to any extra-commercial consideration. However, the Tribunal held that since the company had not taken any commitment about the service from the trainee, it had not behaved in a sensible or businesslike manner and, therefore, the spending of such a large amount on her training without obliging her to undertake service of the company smacked of extra-commercial consideration. The Hon'ble Bombay High Court decided the issue as under:

*"...merely because there was no commitment or contract or bond taken from the trainee, the expenditure which was otherwise proper, cannot be disallowed to the company, particularly when as a result of that expenditure the trainee had secured both a degree and training which would be of assistance to the assessee-company and she had in fact served the company on her return to India. The factum of relationship itself would be an assurance that as far as possible, the result of the training would be utilised for the benefit of the company. Therefore, the expenditure incurred on the foreign education of the daughter was allowable as a deduction in determining the business profits of the assessee-company for the assessment year 1961-62."*

Following the above, and considering the facts and circumstances of the case we decide the effective ground of appeal against the AO.

As a result, appeal filed by the AO stands dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 1<sup>st</sup> January, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 01 जनवरी, 2016 को की गई।

Sd/-

Sd/-

(संदीप गोसाई/Sandeep Gosain )

(राजेन्द्र / Rajendra)

न्यायिक सदस्य/Judicial Member

लेखा सदस्य/Accountant Member

मुंबई Mumbai, दिनांक Date: 01.01.2016

व.नि.स./Vr.Sr.PS.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. Assessee /अपीलार्थी
2. Respondent /प्रत्यर्थी
3. The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,
4. The concerned CIT /संबद्ध आयकर आयुक्त
5. DR "E" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि के खंडपीठ, आ.अ.अधि.मुंबई
6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.