HC-KAR

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 9TH DAY OF JULY, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE S.G.PANDIT**

**AND**

**THE HON'BLE DR. JUSTICE K.MANMADHA RAO**

**INCOME TAX APPEAL NO.676 OF 2017**

**BETWEEN:**

SHRI RAMPUR ARVIND,
PRESENTLY RESIDING AT
NO.603, H BLOCK,
3RD BLOCK,
KORAMANGALA,
BENGALURU – 560 034.

...APPELLANT

(BY SRI. MADHUSUDHAN U A, ADVOCATE FOR
SRI. M. LAVA, ADVOCATE)

**AND:**

THE ASSISTANT COMMISSIONER
OF INCOME-TAX,
CIRCLE 7(2),
BMTC BUILDING, 80 FEET ROAD,
KORAMANGALA, 6TH BLOCK,
BENGALURU – 560 095.

...RESPONDENT

(BY SRI.M.DILIP, ADVOCATE AND
SRI.Y.V.RAVIRAJ, ADVOCATE)



THIS INCOME TAX APPEAL IS FILED UNDER SEC.260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED:21/04/2017 PASSED IN ITA NO.849/BANG/2014, FOR THE ASSESSMENT YEAR 2009-2010. PRAYING THIS HON'BLE

COURT TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT AND TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST APPELLANT IN THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU 'B' BENCH, BENGALURU IN ITA NO. 849/BANG/2014 DATED21/04/2017 FOR THE ASSESSMENT YEAR 2009-10 (ANNEXURE-A).

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE K.MANMADHA RAO)

This appeal is filed by the assessee under Section 260A of the Income Tax Act, 1961 (“the Act” for short), calling in question the correctness of the order dated 21.04.2017 passed by the Income Tax Appellate Tribunal, Bengaluru ‘B’ Bench, Bengaluru, in ITA No.849/Bang/2014 for the Assessment Year 2009-10. The appeal was admitted on 05.12.2017 to examine the following questions of law:-

*(i) Whether the Tribunal was justified in law in upholding the disallowance of legitimate business expenditure of Rs.53,48,852/ incurred towards business promotion expenditure claimed in the profit and loss account on the erroneous appreciation of the claim and scope of Explanation (1) to section 37 (1) of the Act, on the facts and circumstances of the case.*

*(ii) Whether the Tribunal was justified in law in holding that secret commission paid for getting business to private persons constitutes a bribe and not allowable as per Explanation (1) under section 37(1) of the Act, and consequently passed a perverse order on the facts and circumstance of the case.*

2. The appellant herein is the assessee and the respondent herein is the Revenue.

3. The brief facts of the case are that:

The appellant is an individual carrying on business of providing hospitality services and also civil contracting. The appellant filed his return of income on 30.09.2009 declaring total income of Rs.28,78,250/-. The case was selected for scrutiny under Computer Assisted Scrutiny System (CASS) and notices under Sections 143(2) and 142(1) of the Act were issued and duly served upon the appellant on 20.08.2010 and 09.02.2011 respectively.

4. During the course of assessment proceedings, the Assessing Officer noticed that the appellant had debited an amount of Rs.53,48,852/- towards business promotion expenditure. The appellant was engaged in the business of providing hospitality services. The appellant takes properties on rent, equips them and provides the same as service apartments to various business houses and industries, who in turn provide accommodation to their employees.

5. It is the case of the appellant that the said business promotion expenditure was incurred by way of commission or incentive payments to executives of business houses for procuring business. According to the appellant, such payments were made to higher officials in the Human Resources Department of the client companies to ensure that such persons extend business to the appellant. The appellant contended that the expenditure was incurred wholly and exclusively for the purpose of business and that such payments

were not in the nature of bribe so as to attract Explanation (1) to Section 37(1) of the Act.

6. However, the Assessing Officer characterised such payments as bribes and disallowed the claim of expenditure. Accordingly, an amount of Rs.53,48,852/- was added back to the total income of the appellant by order dated 05.12.2011 passed under Section 143(3) of the Act.

7. Being aggrieved by the said order, the appellant preferred an appeal before the Commissioner of Income-tax (Appeals)-I, Bengaluru. The Commissioner of Income-tax (Appeals), by order dated 28.03.2014 in ITA No.219/AC-7(2)/A-I/13-14, confirmed the disallowance made by the Assessing Officer. The appellant thereafter preferred an appeal before the Income Tax Appellate Tribunal, Bengaluru.

8. The Tribunal, by order dated 21.04.2017 passed in ITA No.849/Bang/2014, dismissed the appeal and confirmed the order passed by the Commissioner of Income-tax (Appeals). Being aggrieved by the same, the appellant has filed the present appeal.

9. The learned counsel for the appellant contended that the authorities below were not justified in disallowing the business promotion expenditure of Rs.53,48,852/-. It was submitted that the expenditure was incurred in the course of the appellant's business for procuring business from various business houses and was laid out wholly and exclusively for the purposes of business. Therefore, the appellant was entitled to deduction of the said expenditure under Section 37(1) of the Act.

10. Learned counsel further submitted that the Assessing Officer proceeded on an erroneous assumption that the payments constituted bribes. According to the appellant, the recipients were not public servants or employees of any Government or quasi-Government establishment, but were persons connected with private business houses. It was contended that such payments, at the highest, could be termed as secret commission and were not prohibited by law and, therefore, Explanation (1) to Section 37(1) of the Act was not attracted.

11. *Per contra*, learned counsel for the respondent supported the order passed by the Tribunal. It is submitted that the appellant, having claimed deduction under Section 37(1) of the Act, was required to establish the nature of expenditure and prove that such expenditure was incurred wholly and exclusively for the purpose of business.

12. The learned counsel submitted that the appellant failed to furnish the basic details regarding the alleged commission payments, including the names and addresses of the recipients, details of payments, dates of payments, mode of payment and supporting documentary evidence. The authorities below were justified in disallowing the expenditure claimed by the appellant.

13. The learned counsel for the Revenue further submitted that the Tribunal, while considering the appellant's claim regarding payment of secret commission and the applicability of Explanation (1) to Section 37(1) of the Act, had rightly relied upon the decision of the Punjab and Haryana High Court in ***Commissioner of Income Tax v. Dhanpat Rai and Sons,*** *reported in* ***362 ITR 7***. It is contended that the

distinction sought to be made by the appellant with regard to the recipients of such payments being private persons and not public servants would not advance the case of the appellant, particularly when the appellant had failed to establish the nature, genuineness and allowability of the expenditure claimed with supporting particulars and evidence. Therefore, the Tribunal was justified in sustaining the disallowance.

14. We have heard learned counsel for the parties and perused the material available on record.

15. The dispute in the present appeal relates to the disallowance of Rs.53,48,852/- claimed by the appellant towards business promotion expenditure.

16. The appellant seeks deduction of the said amount under Section 37(1) of the Act contending that the expenditure was incurred wholly and exclusively for the purpose of business. Section 37(1) of the Act permits deduction of expenditure incurred wholly and exclusively for the purpose of business or profession, subject to the conditions contained therein. A claim for deduction cannot be accepted merely on

the assertion of the assessee. The assessee claiming such deduction is required to establish the nature of expenditure and the circumstances in which such expenditure was incurred.

Section 37 of the Income Tax Act reads as under:-

> *37. General.—(1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".*
>
> *[Explanation 1.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]*
>
> *(2) ****
>
> *[(2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party.]*

17. In the present case, the Commissioner of Income-tax (Appeals) recorded a specific finding that the appellant had

not furnished the primary details relating to the alleged commission payments. It was noticed that the appellant had not produced the names and addresses of the persons to whom the payments were allegedly made, the dates and mode of payments and supporting documentary evidence either before the Assessing Officer or before the appellate authority.

18. It is observed that the Tribunal, after considering the rival submissions, affirmed the finding recorded by the Commissioner of Income-tax (Appeals) and held that the appellant had failed to discharge the primary onus cast upon him for claiming deduction of the expenditure under Section 37(1) of the Act. The Tribunal, while arriving at the said conclusion, applied the principles laid down by the Hon'ble Kerala High Court in ***Ram Bahadur Thakur v. CIT***, *reported in* ***257 ITR 289***, regarding the requirements to be satisfied for claiming deduction under Section 37(1) of the Act and held that, in the absence of necessary particulars and supporting evidence, the expenditure claimed could not be allowed as deduction.

19. The submission of the appellant that the recipients were private persons and not Government officials requires consideration. The appellant has proceeded on the basis that Explanation (1) to Section 37(1) of the Act would apply only where payments are made to public servants or persons connected with Government establishments.

20. However, in the facts of the present case, the disallowance has not been sustained merely on the basis of the status of the recipients. The fundamental issue is that the appellant failed to establish the genuineness and allowability of the expenditure claimed by producing necessary particulars and supporting evidence. The Tribunal has also considered the contention regarding secret commission payments and has relied upon the judgment of the Punjab and Haryana High Court in ***Dhanpat Rai'***s case *supra*.

21. The said finding is founded on the absence of primary particulars and supporting material in respect of the expenditure claimed and, therefore, cannot be said to suffer from perversity.

22. The findings recorded by the Tribunal are findings of fact based on appreciation of the material available on record. In an appeal under Section 260A of the Act, interference is warranted only when a substantial question of law arises. The appellant has failed to demonstrate that the findings recorded by the Tribunal are perverse or that any relevant material has been ignored.

23. The contention regarding increase in turnover during the relevant assessment year also cannot, by itself, establish the allowability of the expenditure claimed. The requirement under Section 37(1) of the Act is satisfaction of the statutory conditions and proof of the expenditure.

24. In the aforesaid circumstances, we find no infirmity in the order passed by the Tribunal affirming the disallowance of the expenditure claimed by the appellant. Consequently, the substantial questions of law framed for consideration are liable to be answered against the appellant.

25. In view of the foregoing discussion, the substantial questions of law framed for consideration are answered against

the appellant and in favour of the Revenue. Consequently, the appeal stands ***dismissed***.

No order as to costs.

**SD/-**
**(S.G.PANDIT)**
**JUDGE**

**SD/-**
**(DR.K.MANMADHA RAO)**
**JUDGE**

MH/-
List No.: 1 Sl No.: 47