

(1)

**THE HIGH COURT OF MADHYA PRADESH: PRINCIPAL SEAT AT
JABALPUR.**

ITR NO.42/1998

Commissioner of Incometax, Jabalpur

Versus.

M/s Khemchand Motilal Jain,
Tobacco Products(P) Ltd., Sagar.

**Present: Hon'ble Krishn Kumar Lahoti
& Hon'ble Smt. Vimla Jain, JJ.**

Shri Sanjay Lal, Counsel for the petitioner.
Shri A.K. Shrivastava, Counsel for respondent.
Shri G.N. Purohit, the learned Senior Advocate as an *amicus curiae*.

ORDER

(23 .8.2011)

Per Krishn Kumar Lahoti, J.

This is a reference by the Income Tax Appellate Tribunal, Jabalpur in R.A.No.20(Jab)1995 by which the Tribunal has referred following question for the answer of this Court.

“Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the amount of Rs.5,50,000/- paid as ransom money to the kidnappers of one of the Directors was an allowable deduction under Section 37(1) of the Income-tax Act, 1961?”

2 Facts of the case are that the assessee is a private limited company. The main income of the company was from manufacturing and sale of bidis. Sukhnandan Jain was a whole time Director of the assessee company. He was looking after the purchase, sales and manufacturing of *bidis*.

3. On 5.8.1987 Sukhnandan Jain had gone to Sagar for purchase of tendu leaves. On the same day, he was kidnapped for ransom by a dacoit gang headed by Raju Bhatnagar. Immediately complaint and FIR were lodged with Sagar Police. The assessee awaited the action of the police. The police were unsuccessful to recover Sukhnandan Jain from the clutches of dacoit. Ultimately a sum of Rs.5,50,000 was paid by way of ransom for the release of Sukhnandan Jain on 27.8.1987. On 28.7.1987 itself Sukhnandan Jain was released by the dacoits.

(2)

4. The assessee claimed this amount of Rs.5,50,000 under the head of 'General Expenses' and claimed deduction thereof. The Assessing Officer disallowed the claim of the assessee on the ground that the ransom money paid to the kidnappers was not an expenditure incidental to business. On appeal, the C.I.T.(A) allowed the claim of the assessee. The department preferred second appeal before the I.T.A.T. The I.T.A.T confirmed the finding of the C.I.T.(A) and dismissed the appeal of the Department. Thereafter the Department moved an application before the Income Tax Appellate Tribunal, Jabalpur for referring the matter under Section 256(1) of the Income Tax Act to this Court which was allowed by the Tribunal and present reference has been made on 8th January, 1998.

5. The learned counsel appearing for the Revenue submitted that amount of ransom could not have been claimed by way of expenditure as the Explanation of sub-section (1) of Section 37 of the Income-tax Act, 1961 prohibits such expenditure. It is submitted that the payment of any amount which is prohibited by law is not a business expenditure and it cannot be allowed as an expenditure.

Stating aforesaid, it was submitted by Shri Lal, appearing for the Department, that this reference may be answered in favour of Revenue.

6. Shri J.N.Purohoti, the learned Senior Advocate, appearing as *amicus curiae*, and Shri A.K.Shrivastava supported the orders passed by the CITA and ITAT and submitted that payment of ransom is an expenditure. If the aforesaid amount was paid to the dacoits to get Sukhnandan Jain released, who was on business tour, working as Director of the Company, the aforesaid amount was rightly claimed as an expenditure of business. It is insisted that at the relevant time, Sukhnandan Jain was on a business tour and for this purpose, he was staying at a Govt. Rest House at Sagar from where he was kidnapped. .

Reliance is placed to the Apex Court judgment in ***Sassoon J.David and Co.P.Ltd. vs. Commissioner of Income-Tax, Bombay*** 118 ITR 261 and 157 ITR 212 Calcutta High Court in the case of ***Commissioner of Income-Tax West Bengal, Calcutta vs. Karam Chand Thapar and brothers (P) Ltd.*** It is submitted that the reference may be decided in favour

(3)

of the assessee. They have also placed reliance to the Full Bench Judgement of this Court in **Addl. Commissioner of Income-Tax vs. Kuber Singh Bhagwandas** 118 ITR 379.

7. To appreciate the rival contentions of the parties, it would be appropriate if the findings recorded by the Income Tax Appellate Tribunal in order dated 19th September, 1990 and the Commissioner of Incometax (Appeal) in order dated 23rd Feb. 1995 are referred.

8. The Commissioner of Incometax(Appeals) in paras 13,14 and 15 of the order considered this question. The CIT(A) in para 18 had considered the contentions and recorded his finding in para 19. We quote paras 13,14,15 and 19 of the order which reads as under:

“ 13. Ground nos.8,9 and 10 relate to a disallowance of a claim for deduction of Rs.5,50,000/- On page 2 of the assessment order, the Ld. Assessing officer has observed that under the head “ general charges” the assessee debited Rs.5,92,274/- While scrutinizing the details of these expenditure, the Ld. Assessing officer found that a sum of Rs.5,50,000/- was spent through a voucher no.1190 dated 24th August, 1987. This amount was ransom money paid to the kidnaper of Shri Sukhnandan Jain, a Director of the company. In the assessment proceedings, assessee submitted that Shri Sukhnandan Jain was kidnapped on 5th August, 1987 by one Raju Bhatnagar and members of his gang from Sagar Rest House. Total ransom money of Rs.30 lacs was originally demanded by the kidnapper. It was, however, reduced to the sum of Rs.5,50,000/- after a protracted negotiation and discussion. The assessee claimed the deduction of this amount under Section 37 of the Incometax Act. It was urged that the expenditure was for commercial expediency. The Ld. Counsel of the appellant, at the time of assessment proceedings, relied on the decisions of the Hon'ble Madras High Court and Hon'ble Gujarat High Court, reported in 138 I.T.R. 779 and 104 ITR 711 to impress that ordinary principles of commercial expediency could not be ignored by the Ld. Assessing officer. The assessee also contended before the Ld. Assessing officer that Shri Sukhnandan Jain was an effective and efficient Director of the company. Therefore, the sum of Rs.5,50,000/- was paid to the kidnapper to get the Director released. These contentions did not find favour with the Ld. Assessing officer. He was of the opinion that the expenditure was of personal nature. Accordingly, he disallowed the amount of Rs.5,50,000/-

14. At the time of hearing of the appeal, the Ld. counsel, Shri B.C.Jain and Shri Jeewan Lal Jain, Director stated the background of the issue. The Ld. Counsel stated that Shri Sukhnandan Jain joined the appellant company on 1st

(4)

April, 1983 as a Quality Control Inspector. He was appointed on a monthly salary in the scale of 1000-10-1500 per month. He is a commerce graduate and was of 24 years age. Shri Sukhnandan Jain learned the technique to ascertain the required qualities of tendu leaves of different varieties used for manufacture of bidis. The company was highly satisfied with his performance. This led to his appointment as a Director (Works) in 1986. Ld. Counsel stated that a contract was executed between Shri Sukhnandan Jain and the assessee company on 21st August 1986 setting out terms and conditions of his employment. According to the Ld counsel, Shri Sukhnandan Jain happens to be a shareholder of the company also. The Ld counsel further submitted that Shri Sukhnandan Jain was one of the two Directors, who were below 30 years in age. The other Directors were of middle ages. By sheer dint of labour he contributed to a great extent to the performance of the appellant company. The Ld counsel went on to submit that Shri Sukhnandan Jain was incharge of quality control, which required that he personally selects and orders for purchase of different varieties of tendu leaves.

15. The Ld counsel and the Director submitted that Shri Bihari Lal, the man who asked Shri Sukhnandan Jain for the meeting at M.P. Tourism Establishment at Sagar was a supplier of tendu leaves to the Company. In his capacity of supplier of tendu leaves, he was personally known to Shri Sukhnandan Jain. According to the Ld counsel, during the accounting year, relevant for the assessment years 1987-88, Shri Bihari Lal supplied the company tendu leaves worth Rs. 8.25 lakhs approximate. At that material point of time, Bihari Lal was acquainted with different source of tendu leaves traders. According to the Ld counsel when Bihari Lal fixed up an appointment for meeting, Shri Sukhnandan Jain was duty bound to meet him in the interest of the business of the appellant company. As regards the observation of the Ld assessing officer that the tourism establishment was not a place of business, the Ld counsel averred that for the purpose of conduct of business, the appellant company or its directors need not always be sitting in their offices. If the business need required a director to meet somebody at a particular place, anywhere in the country or outside the country, it is for the company or its directors to decide whether to go to that place or not. Coming to the observations of the Ld. Assessing officer that the kidnap took place at night, which was beyond business hours, the Ld counsel stated that there is no fixed time for conduct of business.

19. I have carefully considered the assessment order as well as the elaborate and lengthy submission of the Ld counsel and the director. I am of the opinion that the Ld assessing officer did not properly appreciate the facts of the case. First, it has to be admitted that Shri Sukhnandan Jain was conducting business of the company in the capacity of a Director. He had experience and drive which led to his appointment as Director, He was one of the young Directors. There can be no question of time for conducting business talks or business activity nor can there be any set pattern that the business negotiations and talks have to be carried out from the offices only. Shri Biharilal was the supplier

(5)

to the assessee company as it was natural for Shri Sukhnandan Jain to meet Shri Biharilal for business talks, which was meant for the purpose of procurement of required quantity and quality of tendu leaves. Shri Sukhnandan Jain was in the employment of the company by virtue of an agreement. I have the benefit of going through the agreement. It is enforceable in any Court of law under the Indian Contract Act. Clause 12 of the agreement clearly stipulates that any bona fide expenditure incurred for the purpose of business of the company would be borne by the company itself. The kidnap of Shri Sukhnandan Jain, payment of ransom money, his release thereafter, existence of Raj Bhatjanagr and his gang are all contemporaneous history available, in different news magazines as well as public records. Therefore, these are to be accepted as having evidentiary value. The finding of the Ld assessing officer that the expenditure was personal is unfounded. As already pointed out, by virtue of the contractual obligation, Shri Sukhnandan Jain was always in a position to claim the reimbursement of the ransom money. The company for its smooth business, decided through the resolution of the Board of Directors to deal in the matter. Identity of the recipient of the ransom money is established. In short, company only discharged the contractual obligation to the Director. Shri Sukhnandan Jain in terms of the agreement and it decided to discharge the liability because the company thought it fit. The principle of commercial expediency urged that the trader or businessman is the best to decide the commercial expediency. It is now a settled law that unless a particular expenditure, incurred for business and commercial expediency, specifically barred by any specific provision of Income Tax Act, such expenditure has to be allowed. The only point is that the assessee has to establish that the expenditure was incurred for the purpose of business. In this particular case, the assessee has been able to establish that dictum. Accordingly, I am of the opinion that the amount of Rs.5,50,000 was spent for the commercial necessity of the company and that it is an allowable expenditure under section 37 of the Income tax Act. As a result, the disallowance of Rs.5,50,000 is deleted, Grounds nos.8,9 and 10 are thus allowed in full.”

9. The Tribunal has also considered this aspect in para 6 of the order and for ready reference we quote it thus:-

6. “We have heard the parties. We are of the opinion that the order of the CIT(Appeals) deserves to be confirmed. From the facts brought out above, it is clear that Shri Sukhnandan Jain in his capacity as a Director of the Company and in charge of purchases and quality control had to move to the forest areas and other areas of Bundelkhand which were and are infested by dacoits and kidnappers. The company assigned the particular work of purchase and quality control to Shri Sukhnandan Jain knowing it fully well that he would be facing problems of this nature. From the materials brought out in the paper book of the assessee it has come out that the kidnappers very well knew that Shri Shri Sukhnandan Jain belonged to a business family dealing in bidi and bidi leaves and was moving out quite often in the course of such business. It is also notable that Shri Biharilal, the man who is allowed to have contacted Shri Sukhnandan

(6)

on telephone on 5.8.87 was a well-known business associate of the assessee. If the assessee company had not made this payment to the kidnappers it would have resulted in the loss of life of Shri Sukhnandan Jain and thereby resulting in deprivation of the company services of an experienced executive. Even as per terms of the contract between Shri Sukhnandan Jain and the assessee company Shri Sukhnandan Jain could have claimed this expenditure as reimbursement, had the payment been made by the family members for and on behalf of Sukhnandan Jain only. While section 28 of the I.T. Act imposes a charge on the profits and gains of the business it does not provide how these profits are to be computed. There are sections in the Income-Tax Act which emerge various items which are admissible as deductions but they are not exhaustive of all allowances which could be made in ascertaining the profits of a business taxable under the Act. The profits and gains which are liable to be taxed under the Act are what are understood under ordinary commercial principles.”

10. From the perusal of the aforesaid facts, it is apparent that Sukhanandan Jain was conducting business tour for the company and was staying at Govt. Guest House, Sagar. Sukhanandan Jain visited Sagar to meet one Bihari Lal for the procurement of quality tendu leaves. During his business tour, he was kidnapped. For a period of nearabout 20 days after lodging a report to the police, the respondent waited the efforts of the police, but ultimately on 27th August, 1987 when all the efforts of the police were unsuccessful, then the respondent had made to make payment of ransom amount of Rs.5,50,000 to the kidnappers and ultimately on 28.8.1987, Sukhnandan Jain was released from the clutches of the dacoits. Both the authorities have found that it was a business expenditure and allowed the claim.

11. The contention of the petitioner is that under Explanation of sub-section (1) of Section 37, such expenditure could not have been allowed. We find it appropriate to refer Section 37(1) and Explanation to it for ready reference which reads as under:

The Explanation provides 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. To ascertain whether any expenditure incurred by the assessee for any purpose which is an offence or prohibited by law is to be seen.

Kidnapping for ransom is an offence under Section 364 A of the I.P.C which reads as under:

364 A. Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction and

(7)

threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-Governmental organisation or any other person) to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life and shall also be liable to fine.”

The aforesaid section provides that kidnapping a person for ransom is an offence and any person doing so or compelling to pay, is liable for the punishment as provided in the Section, but nowhere it is provided that to save a life of the person if a ransom is paid, it will amount to an offence. No provision is brought to our notice that payment of ransom is prohibited by any law. In absence of it, the Explanation of sub-section (1) Section 37 will not be applicable in the present case.

12. In the case of **Dr.T.A.Qureshi**, the assessee was a medical practitioner, claiming deduction of the value of the seized articles. The Income tax Department denied the deduction. On an appeal, the appellate Tribunal held that the assessee is entitled to claim the benefit of loss. On an appeal, the High Court held that the Explanation of Section 37 of the Act was fully satisfied that possession of heroine was an offence. Indeed it was a disgrace for the doctor community where one doctor was found indulging in such kind of activities against humanity.

13. In **Sassoon J.Davi and Co.P.Ltd**(supra), the Apex Court considering Section 10(2)(xv) of the Incometax Act which was applicable at the relevant time, that the expression “wholly and exclusively” does not mean “necessarily”. Ordinarily, it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity. It is incurred for promoting the business and to earn profits, the assessee can claim deduction under section 10(2)(iv) of the Act even though there was no compelling necessity to incur such expenditure.

14. The Full Bench of this Court in the case of **Additional Commissioner of Incometax vs. Kuber Singh Bhagwandas** held that to decide whether a payment of money or incurring of expenditure is for the purpose of the

(8)

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.

15. In **Karam Chand Thapar(supra)**, the Division Bench of the Calcutta High Court considering the question of death of Chairman while he was on business tour held that the expenditure incurred to have his body flown back by Airways is incidental to business and an allowable deduction under Section 37(1) of the Income Tax.

16. In the present case, Sukhnandan Jain was on business tour and was staying at Govt. Rest House, Sagar from where he was kidnapped . As he was on business tour, to get him released, if the aforesaid amount was paid to the dacoits as ransom money and because of this, Sukhnandan Jain was released, the petitioner claimed it a business expenditure and the authorities namely, Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal have allowed the aforesaid expenditure as business expenditure, no fault is found.

17. Sukhnandan Jain remained in custody for a period of nearabout 20 days. The police were also informed and after waiting 20 days for the police action, If the respondents to save his life paid the aforesaid amount, then the aforesaid amount cannot be treated as an action which prohibited under the law. No provision could be brought to our notice that payment of ransom is an offence. In absence of which, the contention of the petitioner that it is prohibited under explanation of Section 37 (1) of the Incometax Act has no substance. The entire tour of Sukhnandan Jain was for purchase of tendu leaves of quality and for this purpose, he was on business tour and during his business tour, he was kidnapped and for his release the aforesaid amount was paid.

(9)

18. In these circumstances, we affirm the reasonings of Commissioner of Incometax and the Income Tax Appellate Tribunal allowing the aforesaid expenditure as business expenditure.

In view of the aforesaid, this reference is answered in favour of the assessee and against the Department.

(Krishn Kumar Lahoti)
Judge
(.8.2011)

(Smt. Vimla Jain)
Judge
(.8.2011)

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