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Harbans Singh, J.

For the reasons given above, I find no force in the contention which is raised by the learned counsel for the appellant and dismiss the appeal. In the peculiar circumstances of the case, I leave the parties to bear their own costs in this Court.

K.S.K.

INCOME-TAX REFERENCE

Before Inder Dev Dua and Prem Chand Pandit, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB,—*Applicant.*

versus

M/S JAGATJIT DISTILLING & ALLIED INDUSTRIES LTD.—*Respondent.*

Income Tax Reference No. 6 of 1962.

1965

July, 22nd

Income-Tax Act (XI of 1922)—S. 10(2)(xv)—Winding up petition filed against the company by some shareholders—Compromise brought about by a negotiator as a result of which winding up petition was withdrawn—Amount paid to the negotiator—Whether allowable—Travelling expenses incurred by company's employees in connection with the defence of winding up petition—Whether allowable.

Held, that the amount paid by the company to a negotiator as his remuneration for bringing about a compromise between the company and the shareholders who had filed the winding up petition as a result of which the said petition was withdrawn and dismissed is allowable under section 10(2)(xv) of the Indian Income-Tax Act, 1922. The amount was expended wholly and exclusively for the purpose of the business of the assessee-company for, if the share holders had succeeded in their litigation, the company would have been wound up and its entire business come to an end. Since the existence of the Company was threatened, it was part of its business to defend this litigation. Thus, this expenditure was incurred for the preservation of its business.

Held, that the travelling expenses incurred by the employees of the company in defending the winding up petition against the company are also allowable under section 10(2)(xv) of the said Act, as they were incurred wholly and exclusively for the purpose of the business of the company.

Case referred by the Income-tax Appellate Tribunal (Delhi Bench "B") under Section 66(2) of the Indian Income-tax Act for the decision of the following question of law :—

> *"Whether on the facts and in the circumstances of the case, the legal and travelling expenses amounting to Rs. 9,000 and Rs. 1,000 respectively could be legally allowed as a deduction under section 10(2)(xv) of the Income-tax Act, 1922?"*

D. N. AWASTHY AND H. R. MAHAJAN, ADVOCATES, for the Petitioner.

B. R. TULI AND SUDARSHAN KUMAR TULI, ADVOCATES, for the Respondent.

JUDGMENT

Pandit, J.

PANDIT, J.—On 9th August, 1944, Messrs. Jagatjit Distilling and Allied Industries Limited, Jagatjit Nagar, the respondent in this reference, was incorporated as a public limited company. Later on, this Company forfeited the shares of some of its share-holders, who as a result filed a petition in this Court praying for a winding up order against the Company. The management of the Company naturally resisted this petition. The litigation went on for a number of years and ultimately the matter came before this Court. The parties, however, came to an agreement and the forfeited shares were reallotted to the share-holders. The Company paid Rs. 10,500 to Shri Rajpaul Chadha, for his efforts in bringing about a compromise with Messrs. Shivraj Bhalla and other share-holders, who had filed the abovementioned petition for the winding up of the Company. A sum of Rs. 1,000 was also incurred by the Company for the journeys in connection with the trips of its employees to Patiala with regard to this winding up petition. Both these items were claimed by the Company as a deduction under section 10(2) (xv) of the Income-tax Act, 1922. The Income-Tax Officer disallowed the sum of Rs. 10,500 on the ground that it was considered to be an *ex gratia* payment. The travelling expenses of Rs. 1,000 were also disallowed by him. When the matter went in appeal before the Appellate Assistant Commissioner, he found that out of Rs. 10,500, Rs. 9,000 had been paid for negotiating the settlement between the Company and the disgruntled share-holders and the sum of Rs. 1,500 for

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settling the dispute between the Company and their Chartered Accountants. He allowed only Rs. 1,500, while the order of the Income-tax Officer regarding Rs. 9,000 and Rs. 1,000 on account of travelling expenses was confirmed. The Company then went in appeal before the Income-tax Appellate Tribunal, which allowed both the items of Rs. 9,000 and Rs. 1,000. With regard to the first, its finding was that the expenditure was incurred for no other purpose than the carrying of the normal business of the assessee-Company and this expenditure was necessary, because there was an attack on the very existence of the Company and that attack was repulsed. So far as the travelling expenses were concerned, it held that this item was inseparably related to the first item, because these expenses were incurred for attending the Court, etc. Subsequently, this Court at the instance of the Department directed the Tribunal to draw up the statement of the case and refer the following question of law for the opinion of this Court under section 66(2) of the Income-tax Act:—

> "Whether on the facts and in the circumstances of the case, the legal and travelling expenses amounting to Rs. 9,000 and Rs. 1,000, respectively, could be legally allowed as a deduction under section 10(2) (xv) of the Income-tax Act, 1922?"

That is how this reference has come before us.

The relevant portion of section 10 for the determination of this question reads as under—

> "*Section* 10. *Business.*—(1) The tax shall be payable by an assessee under the head "Profits and Gains of business, profession or vocation" in respect of the profits or gains of any business, profession or vocation carried on by him.
>
> (2) Such profits or gains shall be computed after making the following allowances, namely,
>
> * * * * *
> * * * * *
>
> (xv) Any expenditure not being an allowance of the nature described in any of the clauses (i) to (xiv) inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of such business, profession or vocation.

Learned counsel for the Department submitted that this expenditure of Rs. 9,000 was not covered by the provisions of section 10(2) (xv) mentioned above, as this amount was not incurred wholly and exclusively for the purpose of the business of the assessee-Company. On the other hand, this amount had been paid to Mr. Rajpaul Chadha and this payment had no concern with the business of the Company. So far as the payment of Rs. 1,000 as travelling allowance is concerned, his submission was that it was related to the first item and if that could not be allowed, this item would meet a similar fate.

After hearing the counsel for the parties, I am of the view that there is no merit in this contention. The expression "wholly and exclusively for the purpose of the business" occurring in section 10(2) (xv) of the Income-tax Act, 1922, is of very wide import. The words "for the purpose of the business" were the subject-matter of a recent Supreme Court decision in *Commissioner of Income-tax, Kerala* v. *Malayalam Plantations Limited* (1). There it was held that—

> "The expression 'for the purpose of the business' is wider in scope than the expression 'for the purpose of earning profits'. Its range is wide: it may take in not only the day to day running of a business but also the rationalisation of its administration and modernization of its machinery; it may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title: it may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on a business; it may comprehend many other acts incidental to the carrying on of a business. However, wide the meaning of the expression may be, its limits are implicit in it. The purpose shall be for the purpose of the business, that is to say, the expenditure incurred shall be for the carrying on of the business and the assessee shall incur it in his capacity as a person carrying on the business. It cannot include sums spent by the assessee as agent of a

(1) (1964) 53 I.T.R. 140.

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third party, whether the origin of the agency is voluntary or statutory; in that even, he pays the amount on behalf of another and for a purpose unconnected with the business."

In the present case, I find that if the share-holders had succeeded in their litigation, the Company would have been wound up and its entire business come to an end. Since the existence of the Company was threatened, it was part of its business to defend this litigation. Thus, this expenditure was incurred for the preservation of its business. The Tribunal was, therefore, right in holding that there was an attack on the very existence of the assessee-Company and this amount of Rs. 9,000 had been spent in successfully repulsing it. In this connection, I am also supported by the decision of the House of Lords in *Morgan (Inspector of Taxes)* v. *Tate and Lyle Limited* (2), where it was observed—

"A company engaged in sugar refining incurred expenses in a propaganda campaign to oppose the threatened nationalisation of the industry. The Commissioners for the General Purposes of the Income-Tax found that 'the sum in question was money wholly and exclusively laid out for the purposes of the company's trade and was an admissible deduction from its profits for income-tax purposes':—

Held, that the object of the expenditure being to preserve the assets of the company from seizure and so to enable it to carry on and earn profits there was no reason in law to prevent the Commissioners from so finding. On the evidence, it was not to be assumed that the trade of the company would have continued, in an income-tax sense, in other hands, after nationalisation and accordingly that the expenditure was incurred for the purpose of preventing a change of ownership."

This amount was thus incurred for carrying on the business of the Company and for no other purpose. It was, therefore, expended wholly and exclusively for the purpose of

(2) (1954) 26 I.T.R. 195.

the business of the assessee-Company and had, therefore, been rightly allowed by the Tribunal. That being so, and as conceded by the learned counsel for the Department, the other item of Rs. 1,000 was also incurred wholly and exclusively for the purpose of the business of the Company. In my opinion, the answer to the question of law referred to us is that on the facts and in the circumstances of the present case, the legal and travelling expenses amounting to Rs. 9,000 and Rs. 1,000, respectively, were legally allowed by the Tribunal under section 10(2)(xv) of the Income-tax Act, 1922. The respondent will get his costs. Counsel's fee is fixed at Rs. 150.

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INDER DEV DUA, J.—I agree.

Dulat, J.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

MESSRS SHEO CHAND RAI RAM PARTAP,—*Petitioner.*

versus

JAGDISH PERSHAD SRIVASTAVA,—*Respondent.*

S. A. O. 112-D of 1963.

1965

July, 23rd

Delhi Rent Control Act (LIX of 1958)—S. 10—Proceedings for fixation of standard rent—Interim rent fixed—Payment thereof—Whether can be enforced by Rent Controller.

Held, that in the proceedings for the determination of standard rent before the Rent Controller, though actually initiated by the application for ejectment which had been withdrawn by the landlord, the fixation of interim rent is envisaged by the Delhi Rent Control Act, 1958, and the Rent Controller has an inherent power to enforce payment of the sum so settled.

Second Appeal under section 39 of Act 59 of 1958 from the order of Shri P. C. Patwar, Rent Controller, Delhi, dated 23rd March, 1965, modifying the order of Shri P. C. Sani Additional Rent Controller, Delhi, dated 8th January, 1965 ordering the deposit of interim rent at Rs. 175 from 1st February, 1961 to 31st August, 1962 and at Rs. 120 p. m. from 1st September, 1962 to 23rd March, 1965, with no order as to costs.

S. N. CHOPRA, ADVOCATE, for the Petitioner.

D. D. CHAWLA, ADVOCATE, for the Respondent.