

Matter remanded as AO didn't give an opportunity to assessee to explain genuineness of lease back transaction

Summary – The High Court of Gujarat in a recent case of Indu Nissan Oxo Chemical Industries Ltd., (the Assessee) held that where assessee-company claimed a certain amount by way of foreign travelling expenses of directors and employees and Assessing Officer disallowed such claim on ground that details called for were not furnished, but Tribunal following its order made in assessee's own case for earlier assessment years allowed claim of assessee, Tribunal committed an error in allowing travelling expenses without its full verification.

Facts

- In the return of income filed for the assessment year 1996-97, the assessee-company had claimed a certain amount by way of foreign travelling expenses of the directors and employees.
- The Assessing Officer had disallowed the claim for travelling expenses on the ground that the details called for were not furnished.
- On appeal, the Commissioner (Appeals) following the order made by the Tribunal in the assessee's own case for the earlier assessment years 1994-95 and 1995-96 allowed the travelling expenses.
- On second appeal, the Tribunal upheld the order of the Commissioner (Appeals).
- On appeal to High Court:

Held

- From the orders on record, it clearly emerges that the Assessing Officer disallowed the claim on the premise that the assessee failed to establish that the expenditure was incurred for the purpose of business. On the other hand, the Commissioner (Appeals) and the Tribunal merely referring to the earlier orders made in case of the very assessee allowed the claim. The Commissioner (Appeals) as well as the Tribunal committed an error in allowing the expenditure without its full verification.
- Surely the foreign travelling expenses, if incurred for the purpose of business, would be allowable as the business expenditure. However, the assessee has to establish that the travelling was undertaken for the purpose of business and, therefore, the expenditure was business expenditure. Merely because on the basis of material for the earlier years, the Commissioner (Appeals) and the Tribunal allowed such expenditure would not by itself mean that in the later years also any expenditure under the same head must be automatically allowed. The assessee owed a duty to establish the basic facts to demonstrate, particularly when called upon by the Assessing Officer, that the expenditure was in fact incurred for the purpose of business.
- The issue must be examined on year-to-year basis on the basis of evidence on record.

- In the result, the orders passed by the appellate authorities were liable to be set aside and the order of the Assessing Officer deserved to be restored.