IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'G', MUMBAI

BEFORE SHRI J SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No. 6577 to 6582/Mum/2009
(Assessment Years: 2001-02 to 2006-07)

Westin Hospitality Services P Ltd.,
C/o The club, 197 D N Nagar,
Andheri (W),
Mumbai-400053
PAN: AAACW3255G .... Appellant

Vs

DCIT Cen CIR 39,
Gr.Floor, Aayakar Bhavan,
M K Road,
Mumbai-400020. ... Respondent

Assessee by : Shri Paresh Vakharia
Respondent by : Mrs. Neeraj Vinay Bansal

O R D E R

PER VIJAY PAL RAO,JM

These six appeals by the assessee are directed against the different orders of CIT(A) of dated 8.10.2009 arising from the assessment orders passed under section 143(3) r.w. section 153 for the assessment years to 2001-02 to respectively.

2. The assessee has raised identical grounds in all these six appeals, thus, solitary common issue arises in these

appeals is whether in the facts and circumstances of the case, the learned CIT(A) is justified in confirming the disallowance of expenditures incurred on the foreign education of son of the director of the assessee company.

3. The brief facts relevant to the issue emerging from the record and particularly by taking the assessment year 2001-02 as basis are as under :

3.1 The assessee company is in the business of serving of ready to serve food and beverages (only tea and coffee) to the hotels and clubs. There was a search and seizure operations under section 132 of the Income Tax act, 1961 carried out on 22.02.2007 at the residential and business premises of the Khanna group of cases and the main concern/person of the Group. The assessee is one of the group concern of the Khanna Group and subject to search and seizure . Mr. Dinesh Khanna was found to be the main person of the group. M/s Khanna Hotels Pvt ltd owns the famous club, named “the club” which is located at Andheri (W), Mumbai. The assessee company and M/s Khanna Hotels Pvt ltd entered into an agreement dated 28.6.1998. As per the said contract the assessee agreed for serving ready food and beverages (tea and coffee) to all the hotels and banquets facilities at the

Club. It was found that the assessee company has incurred an expenditure on an employee for education including the traveling expenditures on Shri Tushar Khanna, who is son of one of the Directors of the Company i.e Mrs.Nishi Khanna. The details of expenditures incurred for all these six years are as under :

AY 2001-02	₹ 29,27,748
AY 2002-03	₹ 14,95,826
AY 2003-04	₹ 17,50,057
AY 2004-05	₹ 23,78,669
AY 2005-06	₹ 3,14,546
AY 2006-07	₹ 10,501

4. On inquiry about the allowability of such foreign education expenses, the assessee made detailed submissions before the AO which are reproduced by the assessing officer in the assessment order. The main contention of the assessee before the AO was that the assessee company is engaged in the business of hotels and catering services. Food business is highly specialized and extremely subjective to the varied tests of customers. "Proficient Customers Services" backed up by highly dedicated system is a pre-requisite in this line of business ". Since, the industries of hospitality and catering services is facing persistent problems of high " manpower

turnover" this adversely affects the continuity in business and huge quantum of money, time and efforts is spent on training employees and imparting the required skills to the employees. It is experienced that after getting training and skilled personnel leave the assessee-company in lurch. To solve the aforesaid problem of retaining the key employees, it was decided in the Board Meeting held on 14.3.2000 to sponsored Mr. Tushar Khanna to acquire such training and education at Cornell University. The Cornell University is one of the best foreign University in the world.. The assessee company also entered into an agreement with Mr. Tushar Khanna, wherein it was made mandatory for the sponsored employee that after training and return back to India, he will serve the assessee company for a period of minimum period of three years thereafter. The learned AR also contended that Mr. Tushar Khanna earned an honour place in dean's list of the outstanding scholar in October 2002. In May 2004, he completed the training successfully and as per the terms of the agreement, he returned back to India and employed with the assessee The entire training and education in hotel management was for the benefit of the assessee company being specialized field. This was not a specific case on which the assessee company has incurred the expenses for training and education but in general the assessee company used to incur lakhs of rupees for training of its other employees also. The learned AR further submitted that after joining the company, Mr. Tushar Khanna is driving high sales and profit year after year. He continued to serve the company on a lower remuneration of Rs.35,000/- per month, in compare to the remuneration received by the other employee trained at Cornell University with such experience. Thus, the company is getting advantage and benefit of training expenditure incurred on Mr. Tushar Khanna. It was submitted that the expenditure in relation to the foreign education is wholly and exclusively for the purposes of the business of the assessee company. This decision was taken on the basis of his ability, reliability and guarantee about continuity of the services after training. This type of assurance is not available to the assessee company from the other employees and the person who has ability, integrity and reliability. The assessee has incurred various expenditures on their ex-staff who have left the company within a span of small period. Thus, due to the requirement of the business of the assessee company, the prudent business decision was taken for sending the employee of the assessee company for training and higher education. The assessee relied upon the decision of the jurisdictional High Court in the case of Sakal Paper Limited reported in 256 ITR 114 (Bom), J.B. Advani And Co. Ltd. vs Joint

Commissioner Of Income Tax reported in (2005) 92 TTJ Mum 175 and ITO V/s D M Harish and Co (ITA No.227 / Bom/1982 dated 29th May 1984.

5. The AO by following the order passed under section 143(3) in the assessee's own case disallowed the expenses. It is pertinent to note that the issue of disallowance of foreign education was also in the regular assessment under section 143(3). The assessee filed the appeal against the said disallowance made by the AO while passing the order under section 143(3). The matter was carried to this Tribunal. This tribunal vide order dated 21.1.2009 for the assessment year 2001-02 remitted the matter to the file of the CIT(A) with a direction to decide the issue afresh in accordance with law after considering the additional evidence and after providing the reasonable opportunity of hearing to both the parties. The CIT(A) decided the issue vide impugned order and after giving opportunities to both the sides. Thus, the earlier order which was remitted back by the Tribunal and this order passed under section 143 read with section 153A are merged in the impugned order of CIT(A). The CIT(A) while deciding the issue against the assessee has relied upon the decision of this Tribunal in the case of Intersil India ltd V/s Addl. CIT reported in 101 ITD 85, SBG V/s Mills 07 SOT 561. Apart

from this the CIT(A) has also considered the decision of honorable jurisdictional High Court in the case of CIT v. Hindustan Hosiery Industries, 209 ITR 383 (Bom), decision of Hon. Madras High Court in the case of M. Subramaniam Bros. v. CIT, 250 ITR 769.(Mad) as well as the decision in the case of Commissioner of Income-tax v. R.K.K.R. Steels P. Ltd. [2002] 258 ITR 306 (MAD.)

6. Before us, the learned AR of the assessee apart from reiterating the submissions made before the lower authorities submitted that though Mr. Tushar Khanna who was the son of one of the directors was employed a management trainee of the company, the selection of Mr.Tushar Khanna for Cornell University for admission is on merits. He was employed as management trainee of the company. He has further contended that the Board of Director has passed the resolution for the higher studies and education of Mr.Tushar Khanna from Cornell University which is one of the best University in the World in the field of Hotel Management. Since there was an agreement between the assessee-company and Mr.Tushar Khanna for serving the company for at-least three years after completion of training, therefore, the entire expenditure incurred for the training and education of Mr.Tushar Khanna was for the purpose of business of

assessee-company. He has specifically and forcefully contended that this is not a exceptional case where the assessee company has incurred the expenditure for imparting training and education in abroad only to Mr. Tushar Khanna but there are various instances, where the company has been bearing the expenses for imparting the training and higher education to other employees. He has pointed out that the company is spending about ₹ 25 lakhs yearly for imparting training and education to the employees. Due to the nature and requirement of the business of the assessee-company, the assessee-company has been consistently using such huge amount on training each year. He has submitted that the lower authorities have doubted the employment of Mr.Tushar Khanna with the assessee- company and one of the objection was that he had even not complete age of 18 years when he was given employment in the company. He has submitted that Mr.Tushar Khanna was appointed as Management Trainee in the month of April 2000 just 37 days short of attending the age of 18 years. He has further contended that there is no prohibition for appointing the Management Trainee below the age of 18 years. Thus, the learned AR has vehemently contended that the entire expenditure was for the interest of the company and thus for the purposes of business of the assessee-company. He has relied upon the decisions as referred before of the lower authorities. He has also relied upon the decision of the Hon.Gujarat High Court in the case of Sayaji Iron & Engg. Co. *v.*Commissioner of Income-tax reported in [2002] 253 ITR 749 (GUJ.) as well as the decision in the case of J.B. Advani And Co. Ltd. vs Joint Commissioner Of Income Tax (2005) 92 TTJ Mum 175 (1 SOT 830). He has alternatively submitted that at the best this expenditure may be treated as a perquisites in the name of the employee and therefore cannot be disallowed.

7. On the other hand, the learned DR has submitted that it was only a personnel expenditure on the education of the son of the director of the company. When the son did not even complete the age of 18 years and just passed the school education, how further education can be for the benefit and betterment of the assessee company. The assessee has not adopted any procedure for selection of the employees for higher education in Foreign University. Mr.Tushar Khanna was sent for the higher education not on the basis of requirement of the company or his ability but only because of his relationship with the one of the directors of the company. He has further pointed out that the process of admission at the foreign university must have started before he was appointed as Management Trainee and even before attaining

the age of 18 years. It was only for the purpose of shifting the personal expenditure on foreign education of the son of the director to the assessee company. Even otherwise, he was not an employee at the relevant point of time but only a Management Trainee, therefore, the expenditure cannot be treated as business expenditure. He has relied upon the orders of the lower authorities.

8. We have considered the rival contentions and relevant record. There is no dispute that if the expenditure is incurred by an assessee for the training and higher education of its employees for reaping the benefit of the said training and higher education then the expenditure on such training or higher education would be a business expenditure. In the present case, it appears that the process for admission at the Cornell University, USA for education in Hotel Management must have started much earlier and even before the completion of schooling of Mr. Tushar Khanna who is a son of one of directors of the company. He was appointed as a Management Trainee in the Month of April 2000 and then he got the admission in the University in the month of June 2000. We note that the assessee claimed that he was appointed as Management Trainee on 1,.4.2000, whereas the resolution for sending him for education in Cornell University was

passed by the Board of Directors of the assessee company on 14.3.2000. The resolution of the company is placed at pages 5 and 6 of the paper book. Thus, it is not understandable as to how the decision for sending him for training and education in Hotel Management at Cornell University was taken on 4.3.2000 when he was allegedly appointed as Management Trainee on 1.04.2000. Thus, the decision for sending Mr. Tushar Khanna to the Cornell University for education in Hotel Management was taken being he a son of the Director and not being the employee of the assessee. Even otherwise, it is clear from the facts and particularly from the decision in the Board Meeting held on 14.3.2000 that the process of admission in the Cornell University was started much earlier then he was allegedly appointed as Management Trainee. Therefore, the said appointment of Mr.Tushar Khanna as a Management Trainee was only with a view to claim the expenditure to be incurred on the education of the son of the director of the family owned company as a education expenditure on the ground that the expenditure benefited the company. The entire exercise of alleged appointment as a Management Trainee after the decision taken for sending him to the Foreign University for education is a calculated, pre-planned and deliberate exercise on the part of the assessee company to claim the education expenditure. The Hon. Jurisdictional High Court in CIT v. Hindustan Hosiery Industries (supra) has observed that the assessee was a family concern of a mother and her four sons, among whom Shri Vijaykumar Kejriwal was one. The assessee had taken Shri Vijaykumar Kejriwal as a partner in the firm almost at or about the same time when he was sent for higher studies to the U.S.A. The age of Shri Vijaykumar was 21 at the material time. In these fact the Hon. Jurisdictional High Court has held as under :

> *"We have gone carefully through the orders of the Income-tax Appellate Tribunal, the Commissioner of Income-tax (Appeals) and the Income-tax Officer. It is not possible to accept the submission of learned counsel for the assessee that the expenditure in question was incurred in relation to the business of the assessee-firm. We have no hesitation in recording our conclusion to the fact that the expenditure incurred by the assessee has no nexus with the business of the assessee. We agree with the conclusion arrived at by the Income-tax Officer and the Commissioner of Income-tax (Appeals).*
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> *In the light of the above discussion, we answer the question referred to us in the negative, i.e., in favour of the Revenue and against the assessee."*

9. The case in hand, the decision for sending the son of the director of the assessee-company was taken even prior to the alleged appointment of said son as a Managing Trainee. Moreover, the said appointment was even prior to the age of 18 years of the son of the director and thus, it appears that

giving appointment as a Management Trainee was only with a view to claim the expenses on education.

10. The Hon. Madras High Court in the case of M. Subramaniam Bros. v. CIT, 250 ITR 769 after following the decision of the Hon.Bombay High Court in the case of CIT v. Hindustan Hosiery Industries (supra) has taken a similar view when the assessee firm founded by the father admitted his children even when they were minor to the benefit of the firm, the children continued their studies even after attaining the age of majority. One of the sons was sent abroad for further study could not be regarded as a deputation made by the firm of one of its partners in connection with the business of the assessee-firm. The Hon. High Court has observed it was in substance, only a step taken by the father who was naturally interested in giving the best possible education to his son, and had sent him abroad to get a higher degree after he completed his degree. An agreement that was drawn up was merely intended to give a colour of commercial expediency, and was rightly not relied upon by the Tribunal.

11. We find that the decision of the Hon. Madras High Court is applicable in the facts and circumstances of the present case, where the director of the assessee company interested to send her son for education and giving the colour as the

education was for the interest of the assessee-company and thus claimed as an expenditure. Therefore, the agreement between the assessee and the son of the director cannot change the real intent behind the entire exercise of the arrangement made.

12. In the case of Commissioner of Income-tax v. R.K.K.R. Steels P. Ltd.(supra) the honorable High Court has followed the decision in the case of M. Subramaniam Bros. v. CIT (supra) as under :

> *"The Tribunal .....*
>
> *It was canvassed for the assessee before the Tribunal that the fact that Rajiv Rai was the son of the director of the company should not be held against him and the expenditure incurred on his training was in fact, an expenditure which was to the benefit of the company as he subsequently became a director.*
>
> *If this logic were to be accepted, in every family owned business, all the expenditure incurred in bringing up the children who may later on be given a role in the business as partners or directors could be claimed as business expenditure incurred in training the prospective employees and directors of the business. The expenditure permissible for deduction is expenditure that is wholly and exclusively laid out for the purposes of the business. The expenditure which a father incurs out of his natural love and affection for his children in meeting the cost of their education cannot become a business expenditure merely because he is also the owner or a director of a business in which the son or daughter subsequently takes part."*

13. In the case in hand, the assessee is closely held company in which more than 99 per cent of the holding is with the two members of the family. The mother of Mr.Tushar Khanna is having 49.9 per cent holding and the remaining holding with the other members of the family. Thus, in view of this decision of the Hon. jurisdictional High Court as well as the Hon. Madras High Court (supra), the expenditure for the education of the son of one of the director who is not working for the company but was for nominal and name sake appointed as Management Trainee at the age of less than 18 years just at the time when he had all set go abroad for further education cannot be allowed as business expenditure . The decision relied upon by the learns AR are not applicable in the facts and circumstances of the case because in all those cases expenditure was incurred on the son/daughter of the director while the daughter/son were already working as an employee of the assessee company. We further note that in the case of of Intersil India ltd V/s Addl. CIT (supra), the tribunal vide paragraphs 9 and 10 held as under :

> *"9. In the case of.......*
>
> *When we examine the case of the assessee on the principles so laid down by the Third Member decision, the conclusion is irresistible that the expenditure could not be "said to be entirely without extra commercial considerations. Shri Rishav Mehra was*

not an employee of the company at the material point of time, and there is no material before us, unlike the case of Sakal Papers for example, that the selection of Shri Rishav Mehra was on pure commercial considerations. It is useful to remember that in Sakal Papers case, there was a categorical conclusion by the Tribunal that the person sent abroad was not selected for further studies because of the reason of her relationship with the two directors, that the selection could not be attributed to any extra commercial considerations, and that there were no doubts about her qualifications, as also in her abilities, to serve the paper. In assessee's submissions before us, it was stated that 'though not an employee' Shri Rishav Mehra was rendering services to the assessee company in the USA. However, there is no material to support, or even indicate, that Shri Rishav Mehra rendered any services from the USA. We have also noted that the assessee has categorically accepted that Shri Rishav Mehra was not an employee of the assessee company.

10. Keeping all these factors in mind, as also entirety of the case, we approve the conclusions arrived at by the CIT(A) and decline to interfere in the matter. The expenses incurred on the foreign education of Shri Rishav Mehra, whose only connection with the assessee company at the relevant point of time was that he was son of the Managing Director of the company, cannot be allowed as deduction in computing business income of the assessee company. We see no infirmity in CIT(A)'s sustaining the said disallowance."

14. Accordingly, the case in hand when the son of the director of the assessee company had just completed his schooling and in any case had to take further education /study and the expenditure is to be incurred by the parents being personal in the nature cannot be claimed as business expenses. In view of the above discussion, we do not find any error or illegality in the order of the lower authorities on this issue. Accordingly, we dismiss the appeals filed by the assessee for all the assessment years.

15. In the result, the appeals of the assessee are dismissed.

Pronounced in the open court on 27.10.2010

Sd	sd
(J.SUDHAKAR REDDY)	(VIJAY PAL RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated 27 th Oct 2010
SRL:201010

copy to:

1. Appellant
2. Respondent
3. CIT Concerned
4. CIT(A) concerned
5. DR concerned Bench

BY ORDER

True copy

ASSTT. REGISTRAR, ITAT, MUMBAI