

(2013) 11 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : IT Appeal Nos. 277 of 2004 and 215 of 2007

CIT

APPELLANT

Vs

Shreyans Industries Ltd.

RESPONDENT

Date of Decision : 15-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0058

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Judgement

Rajive Bhalla, J.—By way of this order, we shall dispose of IT Appeal Nos. 277 of 2004 and 215 of 2007 as they involve adjudication of the same questions of fact and law. For the sake of convenience, facts are being taken from ITA No. 277 of 2004.

2. The Revenue has filed an appeal to challenge orders passed by the Tribunal, Chandigarh Bench (B), and the Commissioner (Appeals), Ludhiana, holding that expenditure incurred by the assessee in excavating a drain to discharge effluents, is revenue in nature.

3. The assessee runs a paper mill at Ahmedgarh, District Sangrur, and, therefore, discharges effluents. During the previous year relevant to the assessment year 1996-97, the assessee applied to the Pollution Control Board and the Forest Department, for permission to discharge effluents into the Tallewal drain. The Department of Environment and Forest vide letter dt. 11-9-1995, prepared a proposal to allow excavation of an open drain, through forest land, to enable the assessee to discharge effluents into the Tallewal drain, subject to the following conditions:

"1. Mutation of equivalent 4.063 hec. of non-forest land identified by user agency, in which plantation has already been done, should be done in favour of State Forest Department.

2. Plantation scheme may be submitted for raising plantation on both sides of the proposed open drain for entire length, the user agency will deposit the cost of plantation and its maintenance in favour of State Forest Department.

3. Maintenance cost of plantation, as determined by Forest Deptt., already raised on non-forest land given for compensatory afforestation may be deposited with State Forest Department.

After receipt of compliance report on the fulfilment of the abovementioned conditions, from the State Government, formal approval will be issued in this regard u/s 2 of Forest (Cons) Act, 1980.

Transfer of forest land to user agency shall not be effected by State Government till formal order approving diversion of forest land and issued by this office."

4. Thereafter, vide letter dt. 6-11-1995, the Financial Commr.-cum-Secretary (Forests), Government of Punjab, Department of Forests & Wildlife, Civil Secretariat, Chandigarh, granted approval, in the following terms:

"After careful consideration of this proposal, formal approval is hereby accorded under F(c) Act, 1980 for use of 4.063 hect. of forest land for the open drain to carry effluent of M/s. Shreyans Industries Ltd., from these mills to Tallewal drain, Forest Division, District Sangrur, subject to fulfilment of following conditions:

1. Legal status and ownership of the forest land will remain unchanged.
2. Forest Department shall raise compensatory afforestation on both sides of drain having tree growth with an amount of Rs. 1.62 lacs which is registered to have been received from the user agency for raising and maintenance of plantation.
3. Forest land will be used only for purpose it is being permitted to use.
4. Competent authority reserves the right to add/alter any of the conditions in future.
5. Open drain, if required, will have to be lined to avoid any seepage/leakage of effluent in due course of time.
6. Effluent discharged by the industry into the channel shall be checked regularly by State Pollution Control Board so that it remains within the permissible limit and action be taken by them in case of default under intimation to this office.
7. The land given in lieu of forest land diverted should be declared as protected forest reserved forest.

Breach of any of the conditions will lead to withdrawal of the permission. Forest Department, the DFO Sangrur will ensure proper fulfilment of these conditions."

5. A perusal of the approval reveals that the assessee was allowed to excavate a drain through forest land. The legal status and ownership of forest land remained

unchanged. The assessee was to pay Rs. 1.62 lacs to the Forest Department for raising compensatory afforestation on both sides of drain. The forest land can only be used for the purpose for it is being permitted. The drain if required, is to be lined to avoid any seepage/leakage of effluent and land transferred in lieu of the forest land was to be declared a protected forest/reserved land.

6. The assessee filed a return of income, for assessment year 1996-97. The return was processed u/s 143(1)(a) of the Income Tax Act, 1961 (hereinafter referred to as the Act) and thereafter selected for scrutiny. After issuance of notices under sections 143(2) and 142(1) of the Act, along with a detailed questionnaire particularly with respect to the expenditure incurred, for excavating the drain the assessing officer after referring to a large number of judgments recorded a finding that by constructing the drain, a benefit of enduring nature has accrued to the assessee and, therefore, Rs. 70,79,862 incurred as expenditure to excavate the drain has to be treated as capital expenditure.

7. The assessee filed an appeal before the Commissioner (Appeals), Ludhiana, urging that as land diverted by the Forest Department for allowing discharge of effluents into the Tallewal drain continues to belong to Forest Department, the mere fact that the assessee has transferred land in favour of the Forest Department, or that the assessee is allowed to use the land, cannot raise an inference that expenditure incurred to excavate the drain is capital expenditure. The Commissioner (Appeals) reversed the order passed by the assessing officer by holding that the expenditure is revenue in nature. A relevant extract from the order reads as follows:

"6. The matter has been considered by me. It is an uncontroverted fact that the appellant had to somehow find a way to discharge its effluent in the Tallewal drain and the only way to do so was construction of a drain through the Forest Departments land. The construction of the drain was carried out by the appellant and the documents relating to this show that even though the drain was being used by the appellant there were no exclusive rights which were given to the appellant. In fact the agreement is silent on the exclusive rights with the appellant. It is another matter that there is no other factory which existed in the vicinity which can make use of this drain. Therefore, just because the appellant is making use of the drain would not make it a capital asset of the company. The assessing officers objection that cases relied upon can be distinguished as in those cases only contribution had been made by various assessees for carrying out capital work would not be material to the issue. Whether the assessee carries out the work himself or whether it makes contribution to another agency would not be very material and what has to be seen is whether any capital asset of an enduring nature had come into existence. In the case of the appellant, no such capital asset had come into existence as it cannot claim any proprietorship rights over the drain. I am also inclined to accept the plea of the appellant that the drain being Kacha in nature, that is, mainly the side and base being of mud only

requires extensive maintenance for its up keep and did not constitute any capital asset. However this is not very material to the issue. The fact remains that the appellants claim would be covered by the judicial pronouncements relied upon by the appellant which are narrated above. Hence it is held that the appellant would be entitled to relief of Rs. 70,79,862."

8. A perusal of above extract reveals that the Commissioner (Appeals), Ludhiana, has essentially held that a capital asset of enduring nature has not come into existence and though the drain is being used by the assessee, it does not have any exclusive rights to the drain.

9. Aggrieved by this order, the Revenue filed an appeal. The Tribunal, Chandigarh Bench (B), dismissed the appeal by holding as follows:

"17.... Thus, we are of the opinion that by incurring an expenditure on the construction of drain on the forest land, the assessee has neither acquired any capital asset nor benefit of enduring nature in the commercial sense. The fact that assessee was allowed exclusive use of land for discharge of effluents was in material as the assessee can use such land only for a limited purpose. It is also not relevant whether the benefit for using the drain for discharge of effluents was to run for a number of years or for a short period. The expenditure incurred has neither increased the profitability of the assessee nor its production. The expenditure so incurred was necessarily for the purpose of its business and is allowable as revenue expenditure. We, therefore, confirm the order of learned Commissioner (Appeals) and dismiss this ground of appeal of the Revenue."

10. A perusal of the aforesaid findings reveals that the Tribunal, has held that as expenditure was incurred by the assessee for its business, the fact that the assessee has exclusive use of the drain and has transferred private land does not bring a capital asset of enduring nature into existence. The expense incurred on excavating the drain is, therefore, revenue in nature.

11. The Revenue filed IT Appeal No. 277 of 2004 [reported as Commissioner of Income Tax Vs. Shreyans Industries Ltd., which was allowed [on 8-11-2006--Ed.] in favour of the Revenue by holding that the expenditure is capital in nature. The assessee filed Civil Appeal No. 5855 of 2008, which was allowed by the Hon'ble Supreme Court, on 8-11-2006 (sic-23-9-2008) [reported as Shreyans Industries Ltd. Vs. Commissioner of Income Tax, by holding that the basic question which the High Court was required to answer was "whether the assessee had acquired assets of enduring benefit?", which is required to be answered after examining terms and conditions on which the Department had permitted the assessee to construct an open drain which runs approximately fourteen kilometres through forest land etc. The matter was remitted to the High Court for adjudication afresh. The appeal was admitted on 6-4-2010 after framing the following substantial questions of law:

"(i) Whether on the facts and circumstances of the case, the Tribunal was justified in law in allowing the expenditure of Rs. 70,79,862 incurred by the

assessee under the head Building account, for the construction of drainage for disposal of effluents by treating the same as revenue expenditure, while ignoring the fact that the assessee had acquired an asset of enduring benefit in nature and enjoys exclusive rights for the usage of the same?

(ii) Whether on the facts and circumstances of the case, the Tribunal was justified in law in allowing the expenditure of Rs. 70,79,862 incurred by the assessee under the head Building account, for the construction of drainage for disposal of effluents by treating the same as revenue expenditure, while ignoring the fact that the Forest Department had permitted the assessee to construct and use the drain viz., compensatory a forestation with an amount of Rs. 1.62 lacs and lining of the open drain to avoid seepage/leakage of effluent (is an essential pre-condition for the assessee to own the drain as a tangible asset) enduring in nature and for the usage of which the assessee enjoys exclusive rights?"

IT Appeal No. 215 of 2007 was ordered to be heard along with this appeal.

12. Counsel for the Revenue submits that the Assessee has admittedly constructed a drain to discharge effluents into the Tallewal drain and has shown expenditure in the building account. The terms and conditions of the approval granted for diversion of forest land reveals that the assessee has been granted unhindered access and exclusive use of forest land. In lieu thereof, the assessee has transferred land to the Forest Department. The mere fact that the transfer is not absolute or does not refer to any time frame, or does not transfer proprietary rights, is irrelevant. The assessee has incurred expense for excavating a fourteen kilometre long drain, a capital asset. The fact that the drain may be necessary for the assessee's business, is irrelevant as the assessee has created a capital asset of enduring nature that would enable the assessee to discharge effluents into the Tallewal drain, during each subsequent assessment year. The fact that discharge of effluents is necessary for the assessee's business, does not detract from the fact that the assessee has created an asset that would confer benefit of an enduring nature. It is further submitted that though the approval does not record that land is to be exclusively used by the appellant but as no one else has been granted permission to use forest land. The land is used as a drain by the assessee alone. The fact that land has not been transferred to the respondent, is irrelevant as the nature of the approval coupled with the admitted excavation of the drain clearly indicates that a benefit of enduring nature has been brought into existence. It is further submitted that ownership or title is irrelevant while considering the controversy as what is of significance is whether the assessee has been conferred benefit of an enduring nature. Counsel for the Revenue places reliance upon the following judgments:

1. Commissioner of Income Tax, Bombay Vs. Gwalior Rayon Silk Manufacturing Co. Ltd.,
2. Commissioner of Income Tax Vs. Glen View Rubber Co. (P) Ltd.,
3. Commissioner of Income Tax Vs. T.C.C. Ltd.,

4. United Commercial Corporation Vs. Commissioner of Income Tax,
5. Gobind Sugar Mills Ltd. Vs. Commr. of Income Tax (Central I), Calcutta,
6. Travancore-cochin Chemicals Ltd. Vs. Commissioner of Income Tax, Kerala,

13. Counsel for the assessee/respondent submits that the land provided for excavating the drain continues to vest in the Forest Department. The appellant (sic-respondent) has not been conferred proprietary rights and is merely allowed to use the land to excavate a drain for discharge of effluents. The discharge of effluents is integral to the appellants (sic-respondents) business, thereby clearly proving the revenue nature of the expenditure. The control of the Forest Department is established by the fact that it has charged money for plantation and maintenance of the embankment, thereby clearly indicating that ownership and control of the land continues to vest in the State of Punjab with a mere right of user being conferred upon the assessee. In the absence of any proprietary rights or any right to use the drain for any other purpose, the expenditure which is necessary for the business of the assessee is a revenue expenditure. It is further submitted that as approval can be withdrawn at any time, the assessee does not possess exclusive rights of user. The mere fact that no other factory is located in the vicinity cannot raise an inference that the expenditure incurred is capital in nature. The fact that a drain has been excavated would not raise an inference that a benefit of enduring nature has been conferred upon the appellant (sic-respondent). Counsel for the assessee relies upon the following judgments:

1. Empire Jute Co. Ltd. Vs. Commissioner of Income Tax,
- 2 Commissioner of Income Tax Vs. Kirkend Coal Co.,
3. Commissioner of Income Tax Vs. Singareni Collieries Co. Ltd.,
4. Commissioner of Income Tax, Bombay City-I, Bombay Vs. Associated Cement Companies Ltd., Bombay,
5. Commissioner of Income Tax Vs. Makhan Sarmah Savapandit,
6. L.B. Sugar Factory and Oil Mills (P) Ltd., Pilibhit Vs. Commissioner of Income Tax , U.P., Lucknow,
7. Alembic Chemical Works Co. Ltd. Vs. Commissioner of Income Tax, Gujarat,
8. Commissioner of Income Tax Vs. Lake Palace Hotels and Motels P. Ltd.,
9. Commissioner of Income Tax, Bombay City-I Vs. Hingir Rampur Coal Co. Ltd.,
10. Commissioner of Income Tax Vs. Belgachi Tea Co. Ltd.,
11. COMMISSIONER OF INCOME TAX Vs. BOMBAY DYEING and MANUFACTURING CO. LTD.,
12. Bikaner Gypsums Ltd. Vs. Commissioner of Income Tax, Rajasthan,

13. Commissioner of Income Tax, Baroda Vs. Navsari Cotton and Silk Mills Ltd., ;
and

14. Commissioner of Income Tax Vs. Jayendrakumar Hiralal,

14. We have heard counsel for the parties, perused the impugned orders, relevant statutory provisions and judgments pressed into service for and against arguments advanced by counsel for the parties.

15. The question that lies at the base of this controversy and would answer the substantial questions of law is nature of the benefit derived by the assessee by constructing a fourteen kilometre long drain for discharge of effluents. The question has to be answered in the context of rights conferred upon the assessee by the permission granted to use forest land, the nature of its business, the nature of the asset created, the relation between the assessee's business and the asset and the nature of the benefit derived by the assessee.

16. The question posed namely whether expenditure is "capital" or "revenue" is a question that has vexed Courts and tax authorities alike but in our endeavour to search for certainty and curtail discretion we tend to look for cast iron tests and infallible formulae, a course fraught with danger of missing out a crucial factor peculiar to a case or curtailing the exercise of bona fide discretion. The fine line that separates capital from revenue expenditure is extremely porous as depending upon the facts and circumstances of a case, an expenditure which may appear to be revenue in one case may validly be held to be capital in another.

17. The factors and tests enumerated in judicial precedents are not exhaustive but merely illustrative of what may or may not be relevant in determining whether an expense is revenue or capital. No single precedent or factor would fully answer the question whether an expenditure is revenue or capital. A bundle of factors coupled with the peculiar facts of each case that would necessarily be determinative of whether expenditure is capital or revenue. To place the mode and manner of determining whether an expenditure is "revenue" or "capital" into a straight jacket formula is well nigh impossible.

18. Before we record our final opinion, it would be necessary to quote a para from a judgment of the Hon'ble Supreme Court i.e. Alembic Chemical Works Ltd. case (supra), so as to place the predicament faced while determining whether expenditure is revenue or capital:

"In the infinite variety of situational diversities in which the concept of what is capital expenditure and what is revenue arises, it is well nigh impossible to formulate any general rule, even in the generality of cases, sufficiently accurate and reasonably comprehensive, to draw any clear line of demarcation. However, some broad and general tests have been suggested from time to time to ascertain on which side of the line the outlay in any particular case might reasonably be held to fall. These tests are generally efficacious and serve as

useful servants; but as masters they tend to be over exacting."

19. In order to solve this riddle, whether an expense is revenue or capital, it would be necessary to peruse relevant precedents so as to ascertain whether any binding principle has been set down for determining whether an expenditure is capital or revenue. A judgment of the Hon"ble Supreme Court, in Assam Bengal Cement Co. Ltd. Vs. The Commissioner of Income Tax, West Bengal, may throw some light on this controversy as it lays down a test to determine whether expenditure is capital or revenue, in the following terms:

"..... The question however arises for consideration where expenditure is incurred while the business is going on and is not incurred either by extension of the business or for the substantial replacement of its equipment. Such expenditure can be looked at either from the point of view of what is acquired or from the point of view of what is the source from which the expenditure is incurred. If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly attributable to capital and is of the nature of capital expenditure. If on the other hand it is made not for the purpose of bringing into existence any such asset or advantage but for running the business or working it with a view to produce the profits it is a revenue expenditure. If any such asset or advantage for the enduring benefit of the business is thus acquired or brought into existence it would be immaterial whether the source of the payment was the capital or the income of the concern or whether the payment was made once and for all or was made periodically. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. The source or the manner of the payment would then be of no consequence."

20. In J.K. Cotton Manufacturers Ltd. Vs. Commissioner of Income Tax, Lucknow, while considering this issue, the Hon"ble Supreme Court held as follows:

"Several tests that have been evolved over the years by this Court as also the other High Courts may be briefly formulated as follows:

(1) Bringing into existence an asset or advantage of enduring nature would lead to the inference that the expenditure disbursed is of a capital nature. These terms, such as asset or advantage of enduring nature are, however, purely descriptive rather than definitive and no rule of universal application can be laid down. Ultimately, the question will have to depend on the facts and circumstances of each case, namely, quality and quantum of the amount, the position of the parties, the object of the transaction which has impact on the business, the nature of trade for which the expenditure is incurred and the purpose thereof, etc.

(2) An item of disbursement may be regarded as of a capital nature when it is relatable to a fixed asset or capital, whereas the circulating capital or stock-in-trade would be treated as revenue receipt. Lord Haldane in John Smith & Son v. Moore (1921) 12 Tax Cases 266 (HL) has aptly and adroitly explained the terms

fixed capital and circulating capital thus:

Fixed capital is what the assessee turns into profit by keeping it in his own possession and circulating capital is what he make profit of by parting with it and letting it change masters.

(3) Expenditure relating to framework of business is generally capital expenditure."

21. Thus, while considering whether a particular expenditure is capital or revenue in nature, we venture to hold that one would have to consider (a) the nature of the business (b) the relationship of the asset bears to the assessee's business (c) the nature and extent of expenditure (d) the rights available to the assessee viz. the asset so created (e) the ownership of the asset (f) whether the asset has resulted in an enduring benefit to the assessee (g) the amount of expenditure incurred by the assessee, and (h) whether the asset so created has relation to the profits of business, keeping in mind that these factors are merely illustrative and not exhaustive, and no one factor is conclusive or determinative of the nature of the expense.

22. A perusal of these factors and other precedents, cited by counsel for the parties reveal that a test generally applied while determining whether expenditure is capital or revenue, succinctly put, is if the expenditure leads to acquiring or bringing into existence an asset or an advantage of an enduring benefit to the business, it would be capital but if the expenditure is to the contrary, it would be revenue expenditure. But this test alone may also not be sufficient.

23. We proceed to apply these factors and determine the nature of the expense. The terms and conditions of the approval granted to the assessee reveal that the assessee is allowed to excavate a drain through forest land and in return is required to transfer non-forest land by getting a mutation sanctioned in favour of the Forest Department. The land transferred to the Forest Department would then be declared as a protected forest. The land provided for excavation of the drain would continue to vest in the Forest Department and can only be used for discharge of effluents. The Forest Department shall raise compensatory afforestation on both sides of drain with an amount of Rs. 1.62 lacs to be paid by the assessee. The approval can be withdrawn if the assessee is in breach of any of the conditions. The assessee, in essence, is entitled to unhindered and absolute use of the land for excavating a drain to discharge effluents from its factory. The approval, however, does not transfer proprietary rights to the assessee but transfers in its entirety possessory rights and though it limits user for the purpose of discharge of effluents, does not contain any clause that enables the State to interfere in the user of the land, till such time as the assessee continues to comply with terms and conditions of the approval. The assessee, thus, has complete and exclusive control of the land for the purpose of discharging effluents. The assessee has, admittedly, excavated a drain though on

land given to it by the State which will be used by the assessee from year to year. The question whether the expenditure is capital or revenue, would have to be determined on the touchstone of whether excavation of the drain has conferred benefit of an enduring nature.

24. The discharge of treated water within permissible level of effluents is a statutory obligation required to be fulfilled by the assessee in accordance with parameters set out by the Punjab Pollution Control Board. The assessee has been allowed to excavate the drain through forest land in order to meet these parameters. Failure of the assessee to provide for a suitable means of discharge of effluents would necessarily result in the shutting down of its factory for violation of provisions of the statute, rules, regulations and norms framed by the Pollution Control Board. The expense incurred by the assessee has brought into existence a capital asset which the assessee shall use from year to year for discharge of effluents and would, therefore, enure to the benefit of the assessee from year to year. A Full Bench of the Kerala High Court, while considering a case where an assessee was statutorily obliged to set up a water pollution treatment plant, has held in *CIT v. Glen View Rubber Co. (P.) Ltd.* (supra) that a water treatment plant when installed in compliance with statutory requirements, confers an enduring advantage upon the assessee and as the advantage so conferred would enure for all succeeding assessment orders (sic-years), expenditure incurred on its operation and maintenance may be revenue but expenditure spent on installation of the plant confers benefit of an enduring nature and is, therefore, capital expenditure. A relevant extract reads as follows:

"7. We are of the view, when water treatment plant is installed permanently in compliance with the statutory requirement, the same would attain the character of capital expenditure. Installation of water treatment plant of the permanent nature has come into existence with enduring advantage to the assessee. Water treatment plant is a chargeable asset installed to prevent pollution. The question as to whether by installation of this plant, production of centrifuged latex has been increased or not is immaterial. Failure to comply with the statutory requirements of installation of water treatment plant would lead to closure of the factory and hence there is no question of any increase in the manufacture or production in the plant. The water treatment plant installed by the assessee consists of various chambers namely equalisation tank, primary settling tank, mixing channel, aeration tank, secondary settling tank and drying bed. The plant installed is a permanent tangible asset of enduring advantage to the assessee, of a free pollution-free atmosphere and environment. Benefit/advantage derived by the assessee is not only for the year under consideration but for all succeeding assessment years. Expenditure spent for its operating and maintenance costs may be revenue, but the expenditure spent for installation of plant which is of an enduring nature is always capital."

25. We are inclined to concur with the ratio laid down in the aforesaid judgment as any expenditure incurred in complying with statutory requirements

particularly where the asset concerned would enure to the benefit of the assessee from year to year, would necessarily be an asset of enduring nature and, therefore, categorised as capital expenditure. The mere fact that the land is not owned by the assessee, is irrelevant as by excavating the drain through forest land on the basis of approval granted by the Forest Department; the assessee has been able to overcome statutory requirements for release of effluents as prescribed under the Pollution Control Act, the rules and notifications etc. issued thereunder, thereby conferring benefit of an enduring nature that would be available to the assessee from year to year. The fact that the assessee has transferred land to the Forest Department or has paid money for compensatory forestry does not denude the assessee's rights vis-a-vis the asset created.

26. A perusal of the approval granted to the assessee, consideration of the nature of the expense incurred and the statutory obligations for discharge of effluents, in our considered opinion, leave no ambiguity that expense incurred upon construction of the drain for release of effluents have conferred benefit of an enduring nature upon the assessee. We, therefore, answer this question in favour of the Revenue and against the appellant.

27. The second question need not detain us for long as even otherwise, it was answered by the Division Bench in its earlier judgments. It was not interfered by the Hon'ble Supreme Court. The second question was answered in the following terms:

"The Tribunal has recorded following finding on this aspect:

23. We have heard both the parties and carefully considered the rival submissions with reference to facts, evidence and material on record. It is a fact that the assessee had offered gross amount of interest including TDS of Rs. 2,04,259 to tax in the assessment year 1992-93. It is also a fact that the assessee was not allowed credit for the TDS of Rs. 2,04,259 for want of TDS certificates. It is also a fact that inspite of best efforts, the assessee could not obtain TDS certificates. Thus, it was a case of loss which has arisen to the assessee during the course of its business. In the case of *Sutlej Cotton Mills Ltd. v. CIT* (supra), Hon'ble Supreme Court has held that what is material is the factors or the circumstances which cause loss and the true nature and character of loss. If the loss occurred during the course of carrying on the business, it is incidental to it and hence allowable. Admittedly, in this case, the assessee suffered loss during the course of carrying on its business. Therefore, same is allowable. Judgment of Hon'ble Supreme Court in the case of *Sutlej Cotton Mills Ltd. v. CIT* (supra) supports the case of the assessee. We do not find any infirmity in the order of learned Commissioner (Appeals). Same is upheld and this ground of appeal of the Revenue is dismissed."

In view of the findings of the Tribunal, the assessee having suffered loss, the expenditure had to be allowed as revenue expenditure.

The question is, thus, answered against the Revenue and in favour of the assessee."

28. We find no reason to differ with the opinion recorded by the Tribunal as the assessee having suffered a loss, the expenditure has to be allowed as revenue expenditure. Having answered the questions, the appeals are disposed of in terms thereof.