
(2011) 10 KAR CK 0121

In the Karnataka High Court

Case No : Income Tax A. No's. 2975, 2976 and 3011 of 2005

Commissioner of Income Tax and Another

APPELLANT

Vs

Infosys Technologies Ltd. (No. 1)

RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Citation : (2011) 10 KAR CK 0121

Hon'ble Judges : V.G. Sabhahit, J;Ravi Malimath, J

Bench : Division Bench

Advocate : E. Sanmathi Indrakumar, for the Appellant; Arvind Datar for M/s. King and Partridge, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—I.T.A. Nos. 2975 of 2005 and 2976 of 2005 are filed by the Revenue being aggrieved by the common order dated March 31, 2005, passed by the income tax Appellate Tribunal, Bangalore Bench "A" (hereinafter referred to as "the ITAT") in I.T.A. Nos. 732/Bang/1998 and 734/Bang/1998 for the assessment years 1995-96 and 1996-97 wherein the appeals filed by the Revenue challenging the order passed by the first appellate authority were dismissed holding that the amount spent by the assessee for acquisition of membership of the clubs should be treated as revenue expenditure. I.T.A. No. 3011 of 2005 is filed by the Revenue being aggrieved by the common order dated March 31, 2005, passed by the income tax Appellate Tribunal in I.T.A. Nos. 733/Bang/1998 for the assessment year 1994-95, wherein the appeal filed by the Revenue challenging the order passed by the appellate authority, was dismissed confirming the order passed by the appellate authority wherein the appellate authority had set aside the order of the Assessing Officer holding that amount spent for acquisition of membership of the club and sum of Rs. 11,99,000 spent towards obtaining ISO-9001 certificate would amount to revenue expenditure.

2. I.T.A. No. 3011 of 2005 has been admitted for consideration of the following

substantial questions of law:

(1) Whether the appellate authorities were correct in holding that the amounts paid to clubs for obtaining membership should be treated as a revenue expenditure and was allowable deduction and not a capital receipt as held by the Assessing Officer ?

(2) Whether the appellate authorities were correct in holding Rs. 11,99,000 sum paid by the assessee for obtaining ISO-9001 certificate was a revenue expenditure and not a capital expenditure as held by the Assessing Officer ?

3. I.T.A. Nos. 2975 of 2005 and 2976 of 2005 have been admitted for consideration of the substantial question of law No. (1) stated above which is common to all the three appeals.

4. We have heard the learned counsel appearing for the appellants and learned counsel appearing for the respondent on the abovesaid substantial questions of law.

5. The learned counsel appearing for the appellant-Revenue submitted that acquisition of membership would confer enduring benefit as the amount is to be paid only once and no amount is payable further and, therefore, would amount to capital expenditure as rightly held by the Assessing Officer. Therefore, the first appellate authority and the income tax Appellate Tribunal were not justified in holding that the said expenditure is revenue in nature though the benefit is enduring. He further submitted that the amount of Rs. 11,99,000 spent towards obtaining ISO-9001 certificate is not a revenue expenditure and is a capital expenditure as held by the Assessing Officer and the appellate authority and the income tax Appellate Tribunal were not justified in setting aside the said finding holding that the said expenditure is revenue in nature only on the ground that the certificate is only issued for a period of three years. He submitted that the substantial questions of law may be answered in favour of the Revenue.

6. The learned counsel appearing for the respondent-assessee submitted that the concurrent finding arrived at by the first appellate authority and the income tax Appellate Tribunal holding that the amount paid for acquiring membership of the clubs and amount spent for obtaining ISO-9001 certificate are revenue in nature is justified. He submitted that in view of the decision of the hon'ble Supreme Court in *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax*, the hon'ble Supreme Court has laid down that mere enduring benefit would not by itself decide the test for considering as to whether the expenditure is revenue or capital in nature and having regard to the development of technology, science and various methods of transactions involved, the concurrent finding arrived at by the appellate authorities is justified.

7. In support of his contention that the amount paid towards acquisition of membership is a revenue expenditure, he has relied upon the following decisions.

(1) CIT v. Blow Plast Ltd. 2010 322 ITR (St.) 6;

- (2) Commissioner of Income Tax Vs. Samtel Color Limited,
- (3) Commissioner of Income Tax and Another Vs. Wipro Systems,
- (4) Commissioner of Income Tax Vs. Sundaram Industries Ltd.,
- (5) Gujarat State Export Corporation Ltd. Vs. Commissioner of Income Tax, and
- (6) Otis Elevator Co. (India) Ltd Vs. Commissioner of Income Tax,

8. He has also relied upon the decision in The Commissioner of Income Tax-V Vs. Perot Systems TSI (India) Ltd., The Commissioner of Income Tax-V Vs. Perot Systems TSI (India) Ltd., in support of his contention that amount spent towards ISO 9001 certificate is revenue in nature and not capital in nature.

9. We have given careful consideration to the contentions of learned counsel appearing for the parties and scrutinised the material on record.

Re: Substantial question of law (1) in all the appeals

10. The only reason assigned by the Assessing Officer to hold mat the expenditure incurred towards acquisition of membership of various clubs by the respondent-assessee is that the benefit conferred on the assessee is of enduring nature and, therefore, it is a capital expenditure. Further, the appellate authority on consideration of the contention of the learned counsel appearing for the parties, held that the expenditure incurred towards acquisition of membership of the club is revenue expenditure as the acquisition of membership of the club would only confer certain benefits which cannot be said to be so enduring as to amount to capital expenditure, it would only enable the assessee to avail of benefits conferred by the club due to acquisition of membership. In the decision relied upon by the learned counsel appearing for the assessee in Empire Jute Co. Ltd. Vs. Commissioner of Income Tax, the hon"ble Supreme Court has held that the expenditure towards acquisition of club is not capital expenditure but is revenue expenditure. The income tax Appellate Tribunal has confirmed the order passed by the appellate authority. It is well settled mat factors to be borne in mind While considering the question as to whether the expenditure is revenue or capital in nature has been laid down by the hon"ble Supreme Court in Empire Jute Co. Ltd. Vs. Commissioner of Income Tax, which read as under:

(i) It is not a universally true proposition that what may be a capital receipt in the hands of the payee must necessarily be capital expenditure in relation to the payer. The fact that a certain payment constitutes income or capital receipt in the hands of the recipient is not material in determining whether the payment is revenue or capital disbursement qua the payer.

(ii) There may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage

in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case.

(iii) What is an outgoing of capital and what is an outgoing on account of revenue depends on what the expenditure is calculated to effect from a practical and business point of view rather than upon the juristic classification of the legal rights, if any, secured, employed or exhausted in the process. The question must be viewed in the larger context of business necessity or expediency.

11. In the decision relied upon by the learned counsel appearing for the assessee, as referred to above, it has been specifically held that acquisition of membership of the club would be revenue expenditure and not capital expenditure and the decision of this court relied upon by the learned counsel appearing for the assessee in Commissioner of Income Tax and Another Vs. Wipro Systems, would also show that the amount spent towards the membership acquired by the assessee should be treated as revenue expenditure. Therefore, the concurrent finding arrived at by the appellate authority and the income tax Appellate Tribunal that the expenditure incurred for acquisition of membership of the club is revenue expenditure, is justified and cannot at all said to be perverse or arbitrary so as to call for interference in this appeal. Accordingly, we answer the first substantial question of law in all the appeals against the Revenue and in favour of the assessee.

Re: Substantial question of law (2) in I.T.A. No. 3011 of 2005

12. The assessee had spent a sum of Rs. 11,99,000 towards the acquisition of ISO 9001 certificate and claimed that the said expenditure is revenue expenditure. Further, the Assessing Officer by order dated February 27, 1997, held that the certificate, which had been issued on February 15, 1993, was valid for a period of three years; that the assessee had incurred an expenditure of Rs. 11,99,000 towards acquisition of the said certificate and acquiring of the certificate has certainly created the benefit of enduring nature to the assessee and, accordingly/held that the expenditure is capital in nature and disallowed the same and added Rs. 11,99,000 to the total income. Further, the appellate authority, by its order dated July 13, 1998, after considering the contention of learned counsel appearing for the parties, held that the ISO certificate was granted after review of the procedures and set up of the business; therefore, it is a representation of the examination carried out and the satisfaction obtained by the issuing authority and obtaining such certificate do not create any asset of enduring nature. The expenditure is of revenue in nature incurred wholly and

exclusively for the purpose of the appellant and, therefore, it should be treated as revenue expenditure. The appellate authority has also held that the said certificate issued was valid for a period of three years and advantage of the certificate would not persist beyond the period for which the certificate is given. The income tax Appellate Tribunal has confirmed the said order passed by the appellate authority by holding that the expenditure incurred towards acquisition of ISO-9001 certificate is revenue in nature.

13. In the light of the principles laid down by the hon'ble Supreme Court in *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax*, and also the decision relied on by the learned counsel appearing for the assessee in *CIT v. Perot Systems TSI (India) Ltd.* The Commissioner of Income Tax-V Vs. *Perot Systems TSI (India) Ltd.*, it is clear that the ISO certificate, would be granted after inspection of the procedure followed and also the quality maintained in the production of the products of the assessee and the certificate would only certify the quality which is already maintained by the assessee in the manufacturing process and only guarantees the quality and does not confer any benefit of enduring credibility. Therefore, it is clear that the certificate would only certify that the procedure followed by the assessee in the manufacture and the quality maintained during manufacture is in accordance with the standard prescribed. Therefore, following the decisions relied upon by the learned counsel appearing for the assessee, we hold that concurrent finding arrived at by the appellate authority and the income tax Appellate Tribunal that expenditure incurred towards acquisition of ISO-9001 certificate is revenue expenditure is justified and does not suffer from any error or illegality so as to call for interference in this appeal. Accordingly, we answer the substantial question of law against the Revenue and in favour of the assessee and pass the following:

ORDER

The appeals I.T.A. Nos. 2975 of 2005, 2976 of 2005 and 3011 of 2005 are dismissed.