

(1989) 10 RAJ CK 0002

In the Rajasthan High Court

Case No : Income Tax Reference No. 34 of 1981

Commissioner of Income Tax

APPELLANT

Vs

Aditya Mills

RESPONDENT

Date of Decision : 17-10-1989

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (1990) 86 CTR 60 : (1990) 181 ITR 990

Hon'ble Judges : S.C. Agrawal, J; I.S. Israni, J

Bench : Division Bench

Advocate : V.K. Singhal, for the Appellant;

Judgement

S.C. Agrawal, J.—This reference has been made at the instance of the Revenue u/s 156 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), wherein the following question has been referred for consideration of this court:

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the amount of Rs. 7,500 paid as fees to the Registrar of Companies, Jaipur, for bringing about change in the memorandum and articles of association of the company in relation to increase in its authorised capital is allowable as a revenue expenditure ?"

2. This reference relates to the assessment year 1974-75. The authorised capital of the assessee was Rs. 100 lakhs which was increased to Rs. 150 lakhs and, for that purpose, the assessee had to get the memorandum and articles of association amended and a sum of Rs. 7,500 was paid by the assessee to the Registrar of Companies, Jaipur, as filing fee for the said amendment. The assessee claimed deduction of the said expenses as a revenue expenditure. The Income Tax Officer disallowed the said claim of the assessee and allowed only 1/10th of the said expenditure in view of Section 35D(1)(ii) of the Act. The Commissioner of Income Tax (Appeals) held that the expenditure was not covered by Section 35D(1)(ii) of the Act and no part of this expenditure could be

allowed as deduction. He disallowed the entire expenditure of Rs. 7,500. On further appeal, the Income Tax Appellate Tribunal allowed the said deduction of expenditure in the view that the said expenditure was not an expenditure which was capital in nature but was a revenue expenditure. Thereupon, the Revenue moved the Tribunal for referring the above question before this court and the Tribunal has referred the question for consideration of this court.

3. The assessee has not appeared even though he has been served. We have heard Shri V.K. Singhal, counsel for the Revenue.

4. The question as to whether the amount deposited with the Registrar in connection with the amendment of the memorandum and articles of association in relation to increase of the capital has come up for consideration before various High Courts and the view is consistent that the said expenditure is capital expenditure and not revenue expenditure and in this connection reference may be made to *Mohan Meakin Breweries Ltd. v. CIT* (No. 2) [1979] 117 ITR 505 ; *Bharat Carbon and Ribbon Manufacturing Co., Ltd. Vs. Commissioner of Income Tax, New Delhi*, *Bombay Burmah Trading Corporation Ltd. Vs. Commissioner of Income Tax, Bombay City-IV*, and *Groz-Beckert Saboo Ltd. Vs. Commissioner of Income Tax*,

5. The Tribunal has placed reliance on the decision of the Allahabad High Court in *Commissioner of Income Tax, Central Vs. Modi Spinning and Weaving Mills Co. Ltd.*, and the decision of the Bombay High Court in *Commissioner of Income Tax Vs. Elphinstone Spinning and Weaving Mills Co. Ltd.*, We have considered the said decisions and we find that these decisions have no application to the present case. In *Commissioner of Income Tax, Central Vs. Modi Spinning and Weaving Mills Co. Ltd.*, it was held that the amount paid to a lawyer for advising a company on amendments in the articles of association and for drafting a special resolution so that the articles could be amended to bring them into accord with changes brought about in the law relating to companies is an allowable expenditure u/s 10(2)(xv) of the Act as it is incurred in order that the company should continue to function in accordance with law and is not capital expenditure. Similarly, in *Commissioner of Income Tax Vs. Elphinstone Spinning and Weaving Mills Co. Ltd.*, , the Bombay High Court, relying upon the decision of the Allahabad High Court in *Commissioner of Income Tax, Central Vs. Modi Spinning and Weaving Mills Co. Ltd.*, , has held that the amount expended by a company for making alterations in its memorandum and articles of association in order to bring them into accord with changes brought about in the law relating to companies is expenditure incurred by the assessee solely and exclusively for the purpose of its business and the said expenditure is incurred in order that the company should continue to function in accordance with law. The expenditure incurred for the purposes of amending the memorandum and articles of association so as to increase the capital, however, stands on different footing as mentioned in the decisions mentioned above because, as a result of the said amendment, additional amount of capital is available for carrying on the business

of the company and, as such, the expenditure is an expenditure of a capital nature and not a revenue expenditure. We are, therefore, of the view that the Tribunal was not justified in allowing the deduction of Rs. 7,500 paid as fees to the Registrar of Companies, Jaipur, for bringing about a change in the memorandum and articles of association of the company in relation to increase in its authorised capital as revenue expenditure. In our view, the said expenditure should have been treated as a capital expenditure.

6. The reference is, therefore, answered in the negative, i. e., in favour of the Revenue and against the assessee in the following terms :

7. In the facts and in the circumstances of the case, the Tribunal was not justified in holding that the amount of Rs. 7,500 paid as fees to the Registrar of Companies, Jaipur, for bringing about a change in the memorandum and articles of association of the company in relation to increase of its authorised capital is allowable as a revenue expenditure.

8. No order as to costs.