

(2002) 07 RAJ CK 0067

In the Rajasthan High Court

Case No : Income Tax Reference No. 19 of 1994

Commissioner of Income Tax

APPELLANT

Vs

Arawali Constructions Co. (P.) Ltd.

RESPONDENT

Date of Decision : 09-07-2002

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (2002) 177 CTR 79 : (2003) 259 ITR 30

Hon'ble Judges : Y.R. Meena, J; Shashi Kant Sharma, J

Bench : Division Bench

Advocate : R.B. Mathur, for the Appellant; None, for the Respondent

Judgement

1. On an application u/s 256(1) of the Income Tax Act, 1961, the Tribunal has referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in treating the expenditure in the acquisition of software of Rs. 1,38,360 as of revenue nature ?"

2. The assessee-company had acquired computer software which had cost Rs. 1,38,360 which the assessee claimed as revenue expenditure. However, the Assessing Officer had taken it as a capital expenditure and allowed depreciation as per rules. In appeal before the Commissioner of Income Tax (Appeals), the Commissioner of Income Tax (Appeals) has taken a view that the expenditure incurred on technical know-how is a revenue expenditure. In appeal before the Tribunal, the Tribunal decided the issue against the Revenue relying upon the decisions of the Delhi and Bombay High Courts and confirmed the view taken by the Commissioner of Income Tax (Appeals).

3. None appeared on behalf of the assessee. Heard learned counsel for the Revenue.

4. Learned counsel for the Revenue, Mr. Mathur, submits that the computer

software is a programme and computer software used as technical know-how in the mining operation has been treated as capital expenditure. He placed reliance on the decisions of the apex court in the case of CIT v. Elecon Engineering Co. Ltd., (1987) 166 ITR 66 (SC) and a decision of the Bombay High Court in the case of Commissioner of Income Tax Vs. Premier Automobiles Ltd.,

5. During the course of argument, the Assessing Officer has issued notice to the assessee to explain why the expenditure incurred on computer software should not be treated as capital nature. The assessee's counsel submitted the following written explanation which reads as under :

"During the accounting year 1984-85, the assessee has purchased the computer programme from Hindustan Computers Ltd, This computer programme is in fact a revenue expenditure being debited to the profit and loss account. The computer software purchase is in fact a consultancy fee being paid to Hindustan Computers Ltd. for the programme required for the data analysis for the mining purpose, has been purchased. This is not an asset, as stated by you during the course of discussion, as the life of this is restricted to shorter period, for a particular time only this thing is required and again they have to get the programme when get another nature of work whereas software is just a programme and it cannot be called a capital expenditure."

6. We have seen the aforesaid explanation. The assessee claimed that as the expenditure was debited to the profit and loss account as revenue expenditure and it was a software programme and nothing but a consultancy fee being paid to Hindustan Computers Ltd. The Assessing Officer noticed that in the agreement, nowhere is it stated that the amount has been paid for consultancy fee and in fact it is an out-right purchase of a computer programme which relates to technical know-how. It is an asset of capital nature, therefore, treating it as an asset, he allowed depreciation admissible in the rules.

7. In appeal before the Commissioner of Income Tax (Appeals), the Commissioner of Income Tax (Appeals) has considered the decision of the Bombay High Court in the case of Commissioner of Income Tax Vs. Borosil Glass Works Ltd., and a decision of the Delhi High Court in the case of Shriram Refrigeration Industries Ltd. Vs. Commissioner of Income Tax, Delhi-I, and, allowed the claim of the assessee looking to the nature of expenditure as revenue. In appeal before the Tribunal, the Tribunal has also gone by these decisions and further held that the provisions of Section 35AB of the Income Tax Act, 1961, have no application.

8. In Shriram Refrigeration Industries Ltd. Vs. Commissioner of Income Tax, Delhi-I, , there was a collaboration agreement, a licence was given to the assessee to manufacture and sell particular items, there was no transfer or parting with secret process and technical knowledge to the assessee, a lump sum payment was made in addition to royalty based on the sale price of the manufactured articles, it was treated as revenue expenditure. When the technical

know-how has not been transferred in the case of the Delhi High Court that has no application as in the case of technical know-how, i.e., programme of technical know-how, has been transferred by way of feeding of the programme in computer to make use in the mining operation, therefore, the Delhi High Court has no application.

9. In Commissioner of Income Tax Vs. Borosil Glass Works Ltd., , the Bombay High Court has treated acquisition of technical know-how as revenue expenditure. Mr. Mathur brought to our notice the latest decision on this issue whether technical know-how is a capital expenditure or a revenue expenditure. In the case of Commissioner of Income Tax Vs. Premier Automobiles Ltd., , wherein the Bombay High Court has taken the view that the technical know-how is a capital expenditure and expenses incurred on technical know-how are entitled for depreciation u/s 32 of the Income Tax Act, 1961.

10. In CIT v. Elecon Engineering Co. Ltd., (1987) 166 ITR 66 (SC) their Lordships have considered the issue that in an agreement in collaboration if the assessee acquired drawings and patterns for the manufacture of worm reduction gear units and conveyor idlers they were treated as plant or machinery and held that depreciation is allowable in relation to drawings and patterns. The Department has preferred an appeal, the appeal has been dismissed by the Supreme Court.

11. The facts on record are that the payment of Rs. 1,38,360 was not paid for consultancy fee to Hindustan Computers Ltd., in fact, the payment was made for out-right sale of "computer software" which is used as technique in mining operations. The finding of the Commissioner of Income Tax (Appeals) is that the acquisition of software cannot be treated to be an asset of enduring nature. If the programme is used in one mining to another mining operation why it should not be treated as a capital asset and expenditure on that is capital expenditure. Considering these facts and the decision of their Lordships and a later decision of the Bombay High Court, in our view, the acquisition of technical know-how is capital expenditure, therefore, the Assessing Officer has rightly treated the expenditure on acquiring the computer software as expenditure of capital nature and rightly allowed depreciation as per rules.

12. In the result, we answer the reference in negative, i.e., in favour of the Revenue and against the assessee. The reference so made stands disposed of accordingly.