
(1985) 09 BOM CK 0011

In the Bombay High Court

Case No : Income-tax Reference No. 132 of 1975

Commissioner of Income Tax

APPELLANT

Vs

Belapur Co. Ltd.

RESPONDENT

Date of Decision : 12-09-1985

Acts Referred:

Income Tax Act, 1961 — Section 36(1)

Citation : (1986) 161 ITR 516 : (1986) 27 TAXMAN 70

Hon'ble Judges : Kania, J;Bharucha, J

Bench : Division Bench

Judgement

Bharucha, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, made at the instance of the Revenue. It poses the following two questions :

"(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest paid on withdrawals used for the purpose of the payment of dividend was a revenue expenditure ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenses incurred for the purchase of capital asset and the study of diffuser working before the purchase are to be capitalised and both depreciation and/or development rebate allowed thereon ?"

2. Counsel are agreed that the first question must be answered in the affirmative and in favour of the assessee in view of the judgment of this court in Commissioner of Income Tax, Bombay City-III Vs. Shree Changdeo Sugar Mills Ltd., .

3. The facts that we state relate to the second question. The years of assessment involved are 1967-68 and 1968-69, the previous years having ended on September 30, 1966, and September 30, 1967. During each of these years, certain officers or director of the assessee had, in the words of the statement of case, "undertaken foreign tour for the purchase of capital asset as also for the study of diffuser working". The Income Tax Officer disallowed the expenditure for

both the years on the ground that the expenditure was of a capital nature. The Appellate Assistant Commissioner, in appeal, agreed with the Income Tax Officer that the tours were made not only for study but also for the purchase of a capital asset. He directed the Income Tax Officer to capitalise the expenditure for the purposes of depreciation and development rebate and allow the same on such figure as he arrived at. The Revenue carried the matter in appeal to the Tribunal. The Tribunal upheld the direction given by the Appellate Assistant Commissioner to the Income Tax Officer to capitalise the expenditure for the purposes of depreciation and development rebate.

4. Before us, Mr. Jetly, learned counsel for the Revenue, referred to the words of the Tribunal that the tours had been undertaken "for the purchase of capital asset as also for the study of diffuser working". He submitted that if the capital asset which was purchased was a diffuser, the correctness of the order could not be disputed, but it appeared that the capital asset which had been purchased was not a diffuser in which case no depreciation or development rebate could be allowed on that extent of the expenditure which related to the study of the working of the diffuser. The capital asset which was purchased was a diffuser and this is clear from a reference to the question and the order of the Appellate Assistant Commissioner for the assessment year 1968-69. The entire expenditure on foreign tours was, therefore, incurred in connection with the purchase of a capital asset, which was the diffuser. The Tribunal was, therefore, right in upholding the direction of the Appellate Assistant Commissioner to capitalise the expenditure on the foreign tours for the purposes of depreciation and development rebate and to allow the same on such figure as the Income Tax Officer arrived at.

5. The answer to the second question is, therefore, in the affirmative and in favour of the assessee.

6. The Revenue shall pay to the assessee the costs of the reference.