

(1994) 11 MAD CK 0133

In the Madras High Court

Case No : Tax Case No. 326 of 1982 (Reference No. 226 of 1982)

Commissioner of Income Tax

APPELLANT

Vs

Binny Ltd.

RESPONDENT

Date of Decision : 16-11-1994

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (1995) 129 CTR 258 : (1995) 215 ITR 536

Hon'ble Judges : R. Jayasimha Babu, J;K.A. Thanikkachalam, J

Bench : Division Bench

Advocate : C.V. Rajan, for the Appellant; K. Vaitheeswaran, for the Respondent

Judgement

Thanikkachalam J.

1. At the instance of the Department u/s 256(2) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal referred the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the expenditure of Rs. 4,19,000 incurred for re-roofing of the spinning department should be allowed as a revenue expenditure ?"

2. The assessee, Binny Limited, is a public limited company. In the assessment year 1971-72, the assessee replaced the roofing over the spinning department and incurred an expenditure of Rs. 4,19,000. According to the assessee, such expenditure is revenue in nature. Therefore, deduction should be allowed. However, the Income Tax Officer held that it is capital in nature. On appeal the Appellate Assistant Commissioner held that the amount of Rs. 4,19,000 expended by the assessee should be allowed as revenue expenditure. On further appeal, the Appellate Tribunal confirmed the view taken by the Appellate Assistant Commissioner.

3. Before us, learned standing counsel appearing for the Department submitted that the existing roof consisting of wooden frames with G.I. Sheets were

removed and on steel frames, asbestos sheets were placed. Therefore, the expenditure incurred by the assessee is capital in nature. According to learned standing counsel, by incurring this expenditure a new asset came into existence and the replacement made by the assessee is substantial in nature. According to the learned standing counsel, the old roof was substituted by a new roof. Therefore, the expenditure incurred for that purpose is to derive the benefit which is of enduring nature. Therefore, it was submitted that the tribunal was not correct in holding that the expenditure incurred in replacing the roof is revenue in nature. On the other hand, learned counsel appearing for the assessee, while supporting the order passed by the Tribunal submitted that the structure of the spinning department was kept intact but only the roof was replaced. According to learned counsel appearing for the assessee, since the wooden framers and G.I. sheets were replaced by steel frames and asbestos sheets, it cannot be said that a new asset has come into existence. Learned counsel further pointed out that the expenditure incurred is not in the nature of enduring benefit to the assessee. When all other structures in the spinning department were kept intact and only when the roof alone was changed, it was submitted that it cannot be considered that a new asset came into existence. Accordingly, learned counsel appearing for the assessee submitted that the expenditure incurred for replacing the roof is only of revenue nature. In the decision of *Silver Screen Enterprises Vs. Commissioner of Income Tax*, , the Punjab and Haryana High Court while considering the distinction between the capital expenditure and the revenue expenditure observed as follows (at page 580) :

"There is no dearth of decided cases wherein the controversy whether certain expenditure is capital or revenue fell for determination. Some of these decisions have tried to lay down certain principles which are merely aids to the determination of such controversy. Yet, it must be recognised that those tests are not the conclusive tests. It is difficult to formulate a test which will always suffice to discriminate between expenditure which is not capital and expenditure which is capital.

As a working rule, what has to be seen is whether the expense incurred brings into existence an asset, not necessarily a tangible asset, for the enduring benefit of trade. But enduring cannot be termed as everlasting. It is also risky to decide one case on the analogy of another. The correct rule is to examine closely the facts of a given case and then keeping in view the thin dividing line between capital and revenue. A solution has to be found whether the expense claimed is capital or revenue. The decided cases are only useful for they help one to clear one's mind. It may be that sometimes they also tend to confuse the issue."

4. Therefore, for determining whether a particular expenditure is revenue in nature or capital in nature we have to depend upon the facts of each case. The learned standing counsel for the Department relied upon a decision in *KANPUR AGENCIES PRIVATE LTD. Vs. COMMISSIONER OF Income Tax, LUCKNOW*, . According to the facts arising in that case, a sum of RS. 9,560 was claimed to

have been spent by the assessee on the conversion of some manual latrines into flush latrines and on the replacement of the tiled roofs by cement roofs in some of the labourers quarters. The High Court held that a sum of Rs. 9,560 incurred for the purpose of converting the manual latrines into flush latrines and on the replacement of the tiled roofs by cement roofs in some of the labourers quarters is capital in nature. According to the High Court by incurring this expenditure a substantial improvement in the property and a material improvement and change was brought about in the property.

5. The learned standing counsel also relied upon a decision in *Silver Screen Enterprises Vs. Commissioner of Income Tax*, in order to support his contention that the expenditure incurred by the assessee herein is of capital in nature. According to the facts arising in the abovesaid decision, the assessee claimed the expenditure incurred for replacing the old wooden chairs by steel chairs are revenue in nature. However, the High Court was of the view that replacement was an improvement of enduring nature and, therefore, it was not allowable as revenue expenditure. On the other hand, learned counsel appearing for the assessee relied upon a decision in *Commissioner of Income Tax Vs. B.V. Ramachandrappa and Sons*, . According to the facts arising in that case, the assessee claimed expenditure incurred for replacing an old barbed wire fence by a compound wall and the expenditure incurred for replacement of a thatched roof with asbestos sheets as revenue expenditure. The Karnataka High Court accepted that the expenditure incurred for the abovesaid purpose is revenue in nature. The Karnataka High Court pointed out in the context of a building its roof will be a subordinate part of it and, therefore its replacement by asbestos sheets in the place of a thatched roof, should normally be understood as repair.

6. Reliance was also placed upon another decision in the case of *Commissioner of Income Tax Vs. Salem Co-operative Spinning Mills Ltd.*, . According to the facts arising in that case with a view to preserving and maintaining in good condition the already existing assets, the assessee replaced the conventional card clothing by metallic card clothing in the carding section of the mills and claimed the entire expenditure as a revenue expenditure. This claim made by the assessee was accepted by this court by holding that the expenditure in question would have to be treated as charges for repairs and, hence, exigible for deduction u/s 37 of the Act. Again, learned counsel appearing for the assessee relied upon a decision in the case of *Commissioner of Income Tax, Madras Vs. Mahalakshmi Textile Mills Ltd.*, . According to the facts arising in the decision, the assessee which carried on the business of manufacture and sale of cotton yarn, spent Rs. 93,215 for introduction of the "Casablanca conversion system" in its spinning plant. Substantially, this involved replacement of certain roller stands and fluted rollers fitted with rubber aprons to the spinning machinery, removal of ring frames from certain existing parts, introduction, inter alia, of ball-bearing jockey-pulleys for converting the original band-drivers to tape drivers and other additions and alternations in the drafting mechanism. The assessee claimed development rebate on these items of expenditure. The Supreme Court pointed out that the

assessee is not entitled to development rebate on these items as the assessee claimed the relief by treating this expenditure as revenue in nature. Lastly, the learned counsel appearing for the assessee relied upon a decision in the case of Commissioner of Income Tax Vs. Sree Bhagavathi Textiles Ltd., . According to the facts arising in that decision, the assessee, a spinning mill, claimed deduction of expenditure for repairing, renovations and installation of new machinery. The assessee claimed the said expenditure as revenue in nature since the nature of the business is such that the need for modernisation of machinery is imperative. The High Court affirmed the decision of the Tribunal that the expenditure incurred by the assessee on modernising its machinery was revenue in nature.

7. As already pointed out, to decide whether a particular expenditure incurred by the assessee is in the nature of revenue or capital we have to depend upon the facts of each case. According to the facts arising in the present case, the existing roof was changed by the assessee. Originally, the roof was with G.I. sheets placed on the wooden frames. After replacement, the roof was made of asbestos sheets placed on steel frames. The entire structure of the spinning department was not altered. Replacing of the roof was for the purpose of repairing the existing roof. According to the assessee, by replacing the existing roof with asbestos sheets and steel frames, it cannot be said that a new asset has come into existence. The expenditure incurred for the purpose of replacing the roof also cannot be considered to be for the purpose of obtaining an enduring benefit. On the facts, the Appellate Assistant Commissioner and the Appellate Tribunal came to the conclusion that the expenditure incurred by the assessee for replacing the roof is of revenue in nature. For the purpose of modernising the business carried on by the assessee replacement of the roof was stated to be necessary. Considering the factual position, the Tribunal came to the conclusion that the expenditure incurred by the assessee for replacing the roof is of revenue nature. Considering the reasons given by the Tribunal for holding that the expenditure incurred for replacing the existing roof was of revenue nature, we are of the opinion that there is no infirmity in the order passed by the tribunal in holding that the amount of Rs. 4,19,000 expended by the assessee for the purpose of replacement of the roof is revenue in nature. Accordingly, we answer the question in the affirmative and against the Department. There will be no order as to costs. Counsel's fee is Rs. 1,000.