
(1991) 01 KAR CK 0084

In the Karnataka High Court

Case No : Income-tax Referred Cases No's. 58 and 59 of 1984

Commissioner of Income Tax

APPELLANT

Vs

B.V. Ramachandrappa and Sons

RESPONDENT

Date of Decision : 18-01-1991

Acts Referred:

Citation : (1991) 97 CTR 180 : (1991) 191 ITR 34 : (1991) 1 KarLJ 413 :
(1991) 59 TAXMAN 329

Hon'ble Judges : K.B. Navadgi, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : G. Chanderkumar, for the Appellant; G. Sarangan, for the
Respondent

Judgement

K. Shivashankar Bhat, J.—The following question of law has been referred under the provisions of the Income Tax Act, at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the expenditure incurred on replacement of thatched roof with asbestos sheets and barbed wire fence with compound wall was a revenue expenditure ?"

2. The assessee obtained a certain property on lease for the purpose of the business of the assessee. Thereafter, the assessee incurred expenditure to make the godown fit for the purpose of business which the assessee claims to be the repair work. Similarly, the old dilapidated compound wall was replaced initially, the property was covered by a barbed wire fence around it, which was replaced by a compound wall. Further, the thatched roof of the shed was removed and in its place, asbestos sheets were put in, the Appellate Tribunal has accepted this factual position at para 7 of its order. The assessing authority had earlier rejected the claim of the petitioner on the ground that these were expenses of a capital nature and not revenue expenditure, the assessing authority proceeds on the assumption by the Appellate Assistant Commissioner on the ground that the construction of the godown was in the interest of the business of the assessee

and it was not any new asset; further, the replacement of the fence by a compound wall was also part of the business expenditure to prevent thieves and trespassers from entering into the premises. The Appellate Tribunal specifically states that the question pertained to the expenditure incurred in connection with the removal of the barbed wire fence and the putting up of the compound wall, as well as the replacement of the thatched roof of the shed by asbestos sheet and concluded that these were revenue expenditure. Consequently, the Revenue sought a reference which is the subject-matter of these two references, in respect of the two assessment years 1976-77 and 1977-78.

3. Sri Chandrakumar, learned counsel for the Revenue contended that here is a case where the roof was replaced by asbestos sheets and, pH therefore, it is a case of constructing a new roof; similarly, this is a case where the compound wall was constructed by replacing the old barbed wire fence; since these are new constructions replacing the earlier structures, these cannot be treated as "repairs", while Sri Sarangan, learned counsel for the assessee, contended that the entire property will have to be considered as one unit of the assessee taken for business purposes and any alteration of a part of the property for better utilisation of the property for business purposes, will be revenue expenditure, while considering the nature of the expenditure incurred, the entire asset will have to be taken as one unit.

4. Several decisions were cited by learned counsel as usual.

5. The distinction between repair and reconstruction is quite narrow and the meaning attributable to the word "repair" depends upon the facts and circumstances of the case. It is generally understood that repair involves renewal; renewal of a part; of a subordinate part... repair is restoration by renewal. The size and importance of the work involved are to be considered. 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. The purpose of the fence around the business premises is to prevent trespassers and thieves from entering; the dominant purpose is to safeguard the property in the premises, the materials in the premises are certainly part of the business assets of the assessee. In this context, the compound wall cannot be treated in isolation. It is to be understood as part of the business premises and when only a part of the premises is replaced, prima facie, it will be a case of repair. The identity of the entire asset as a whole is not affected at all. The works carried out contribute to the better and safer utilisation of the existing business asset. These works effected, if considered in proportion to the entire business premises, will not be of significant replacement so as to alter the character of the business premises. Therefore, we are of the opinion that the view taken by the Appellate Tribunal is correct in law.

6. However, a few decisions require to be referred to.

7. Empire Jute Co. Ltd. Vs. Commissioner of Income Tax, , is a decision of the

Supreme Court. The question was whether the amount spent to purchase "loom hours" was a revenue expenditure or not. The Supreme Court pointed out that various tests were evolved from time to time for distinguishing between capital and revenue expenditure, but no test is paramount or conclusive. At page 10, it is observed :

"There is no all embracing formula which can provide a ready solution to pH the problem; no touchstone has been devised. Every case has to be decided on its own facts, keeping in mind the broad picture of the whole operation in respect of which the expenditure has been incurred. But a few tests formulated by the courts may be referred to as they might help to arrive at a correct decision of the controvert between the parties. One celebrated test is that laid down by Lord Cave L.C. in *Atherton v. British Insulated and Helsby Cables Ltd.* [1925] 10 TC 155, 192 (HL), where the learned Law Lord stated :

"... when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital."

This test, as the parenthetical clause shows, must yield where there are special circumstances leading to a contrary conclusion and, as pointed out by Lord Radcliffe in *Commissioner of Taxes v. Nchanga Consolidated Copper Mines Ltd.* [1965] 58 ITR 241, it would be misleading to suppose that in all cases, securing a benefit for the business would be prima facie, capital expenditure "so long as the benefit is not so transitory as to have no endurance at all". There may be cases where expenditure, even if incurred for obtaining 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."

8. The distinction between fixed and circulating capital, applied as a test in this regard in some of the cases was also held as not a conclusive test. It was pointed out that even this test breaks down on occasions. In this context, the Supreme Court observed (at page 11) :

"Moreover, there may be cases where expenditure, though referable pH to or in connection with fixed capital, is nevertheless allowable as revenue expenditure. An illustrative example would be of expenditure incurred in preserving or maintaining capital assets."

9. The difficulty faced by referring to analogous cases was also pointed out by the Supreme Court at page 13. The removal of the restrictions, to facilitate the earning of better income, is indicated as a revenue expenditure by reference to a few English cases.

10. In Commissioner of Income Tax, Bombay City-I, Bombay Vs. Associated Cement Companies Ltd., Bombay, , the assesses-company, under an agreement with the Government and the municipality undertook to supply water to the municipality and provide water pipelines, to supply electricity for street lighting and to concrete the main road from the factory to the railway station. In return, the assesses-company was not liable to pay municipal rates and taxes for a period of 15 years. The question was whether the expenditure incurred by the assesses-company for these purposes was a deductible expenditure. The answer was in favour of the assessee. The Supreme Court, at page 262, reiterated the principles stated in Empire Jute Co. Ltd. Vs. Commissioner of Income Tax, and pointed out that :

"What is material to consider is the nature of 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 effectively 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."

11. In Commissioner of Income Tax Vs. Mysore Cements Ltd., this court had to consider whether the expenditure incurred which is attributable to a welfare scheme to put up workers' quarters, which would not vest in the assesses-company, will be a capital or a revenue expenditure. It was pointed out that the test of enduring nature applied to the purpose for which a particular expenditure is incurred is not a conclusive test.

12. In Commissioner of Income Tax Vs. T.V. Sundaram Iyengar and Sons P. Ltd., , the and Commissioner of Income Tax Vs. T.V. Sundaram Iyengar and Sons (P.) Ltd., was affirmed, wherein again the amount advanced by the assessee for construction of houses under a welfare scheme was held to be in the nature of a revenue expenditure.

13. In Zenith Steel Pipes Ltd. (No. 1) Vs. Commissioner of Income Tax, , the Bombay High Court held that putting up of a barbed wire fence was a revenue expenditure. pH

14. Sri Chanderkumar, learned counsel for the Revenue, strongly relied on the decision of the Supreme Court in Travancore-cochin Chemicals Ltd. Vs. Commissioner of Income Tax, Kerala, Here, the contribution made towards the cost of acquisition of land and construction of the road thereon by the assessee-company along with others was held to be a capital expenditure. The Supreme Court held that, by having the new road constructed for the improvement of transport facilities, the assessee-company acquired an enduring advantage for its business and the expenditure incurred by the assessee was of a capital nature. The test of enduring nature was thus applied.

15. However, it must be noted that in a subsequent decision in L.B. Sugar Factory and Oil Mills (P) Ltd., Pilibhit Vs. Commissioner of Income Tax , U.P., Lucknow, , the Supreme Court pointed out that the aforesaid decision should be confined to the particular facts of that case. Under almost similar circumstances, the Supreme Court held that the expenditure incurred was a revenue expenditure and followed Empire Jute Co. Ltd. Vs. Commissioner of Income Tax, and other similar cases.

16. The decision rendered by the Supreme Court in Travancore-cochin Chemicals Ltd. Vs. Commissioner of Income Tax, Kerala, is illustrative of the difficulty involved in applying various tests to find out whether an expenditure involved is a revenue expenditure or capital expenditure.

17. Gurnarain Khanna and Sons Vs. Commissioner of Income Tax, is a decision of the Delhi High Court referred to by Sri Chanderkumar. The assessee was a lessee of a cinema theatre. In compliance with the order of the District Magistrate, the assessee construct new urinals and latrines and claimed the expenditure as revenue expenditure. There was a new construction of the boundary wall also. The Delhi High Court negated the claim of the assessee and held them to be capital expenditure. Even though the urinals, latrines and boundary wall are absolutely necessary for the better and safer utilisation of the cinema theatre and the constructions were part of the amenities to be compulsorily provided, the Delhi High Court found them to be of capital nature. The said decision will have to be treated as flowing out of the particular set of circumstances and we do not think it can be applied as a precedent in all cases.

18. From the foregoing, it is clear that the proposition stated by us at the commencement of this order is supported by the various decisions of the Supreme Court and there cannot be any single rigid formula to find out whether a particular expenditure is revenue in nature or capital and that the expenditure was incurred to obtain a benefit of an enduring nature is not the sole test in every case. The facts and circumstances of each case, read in the background of the assessee's business and other activities, will have to be examined.

19. Consequently, we are of the view that the answer to the question referred to us will have to be in the affirmative and against the Revenue.

20. Reference answered accordingly.