

(1969) 09 AP CK 0010

In the Andhra Pradesh High Court

Case No : Case Referred No. 64 of 1965

Commissioner of Income Tax

APPELLANT

Vs

Challapalli Sugars Ltd.

RESPONDENT

Date of Decision : 05-09-1969

Acts Referred:

Income Tax Act, 1922 — Section 10(2), 10(5)

Citation : (1970) 77 ITR 392

Hon'ble Judges : Ramachandra Raju, J;Gopal Rao Ekbote, J

Bench : Division Bench

Advocate : T. Anantha Babu, for the Appellant; J.V. Srinivasa Rao and M.J. Swamy, for the Respondent

Judgement

Gopal Rao Ekbote, J.—This is a reference made u/s 66(1) of the Income Tax Act, 1922, and the question referred is :

"Whether the interest payment of Rs. 2,38,614 represents an element of the actual cost of the machinery, plant, etc., to the assessee and as such depreciation and development rebate are admissible with reference to this amount also ?"

2. The essential facts are: The assessee in this case is a public limited company engaged in the manufacture and sale of sugar. The company went into production from January 22, 1958. Its first accounting period which relates to 1959-60 assessment year ended on June 30, 1958. The company claimed depreciation and development rebate on the sums which they paid by way of interest. The payment of interest was Rs. 2,38,614. It appears that the company borrowed considerable sums of money from the Industrial Finance Corporation of India for the installation of machinery and other assets. It is on this borrowed capital that the interest was paid. The interest related to the period prior to the commencement of the business from the date of the borrowing. The assessee contended that this payment of interest added to the cost of machinery, plant, etc., to the assessee and as such while calculating depreciation admissible to the

assessee the interest paid should be treated as a part of the cost of the machinery, plant, etc., to the assessee.

3. The Income Tax Officer rejected this claim holding that interest paid from year to year is an admissible item of revenue expenditure. No depreciation, however, can be allowed on the capitalised amount of the expenditure incurred under interest. No part of the above amount can, therefore, be taken as expenditure which can be attributed to the erection of the machinery or other assets on which depreciation is allowable, said the Income Tax Officer.

4. Aggrieved by that order of the Income Tax Officer, the assessee preferred an appeal to the Appellate Assistant Commissioner, Vijayawada. The appellate authority by its order dated 30th March, 1963, disagreed with the conclusion of the Income Tax Officer. In a brief disposal of that aspect of the case, the appellate authority stated that during the time of construction when the moneys are borrowed for the purposes of purchasing the machineries and also for installing them, the cost of maintaining this borrowal, namely, the interest payment is necessarily an item which goes to increase the cost of construction, which is included as a part of the capital cost. The appellate authority, therefore, allowed the depreciation claimed.

5. The matter was carried to the Income Tax Appellate Tribunal. Noting the fact that the interest payments in dispute represented payments on borrowed capital utilised for the purchase of machinery, erection, construction, etc., it held that "the cost to the assessee must necessarily include all expenditure, which it has to incur for acquiring and installing the asset. The interest paid or payable during the period of such acquisition and installation has, therefore, to be considered only as a part of the cost to the assessee. The appeal, therefore, was dismissed.

6. At the request of the department, the Tribunal has referred the above said question to this court.

7. The question in this case arises on the construction of a few words of Sections 10(2)(vi) and 10(5) of the Income Tax Act relating to the computation of the Income Tax and the deduction which can be made in such computation in respect of business income. It has so far evoked only a single judicial opinion, and, therefore, the soil in this respect seems to be almost virgin and no one therefore would be readily inclined to express his opinion as not admitting a doubt or a difference of opinion. We have, after bestowing our best consideration of which we are capable, come to the conclusion which forces us to answer the reference against the assessee and in favour of the department.

8. Now, the words "actual cost" are not defined specifically in the Act. From, the Explanation to Sub-section (5), however, it appears that it is meant for the purpose of that sub-section. It states:

" the expression "actual cost" means the actual cost of the assets to the assessee reduced by that portion of the cost thereof, if any, as has been met

directly or indirectly by Government or by any public or local authority, and any allowance in respect of any depreciation carried forward under Clause (b) of the proviso to Clause (vi) of Sub-section (2) shall be deemed to be depreciation "actually allowed".

9. It becomes immediately plain that this is a restricted definition of the term and is not very useful for the present enquiry. Section 43(1) is the new provision for Explanation 1 to Sub-section (5) of Section 10 of the old Act. It is almost on the same lines and does not render much assistance in reaching the conclusion on the problem before us.

10. We have, therefore, to find out the true meaning of this term and its scope in the context of other provisions of the Act read with Section 10 itself.

11. Now, the provisions of Section 10 indicate that in the computation of the tax payable by an assessee under the head "Profits and gains of business" the assessee is entitled to certain deductions by way of certain allowances and one such allowance is depreciation allowance in respect of machinery, the property of the assessee. The allowance allowable is at a certain prescribed percentage on the written down value.

12. There are three purposes for which it becomes necessary to ascertain the original actual cost to the assessee of the asset in respect of which depreciation allowance is claimed: (1) The cost is the basis of allowance in respect of ocean-going ships; (2) the written down value is calculated with reference to the cost in the case of other assets; (3) u/s 34(2)(i) the aggregate of all depreciation allowance must not exceed the original cost to the assessee, and therefore it would be necessary to ascertain the original cost in order to decide whether the assessee is no longer entitled to the benefit of the relevant provision of the Act.

13. The method of computation of the written down value is two-fold as provided In Clauses (a) and (b) of Sub-section (5) of Section 10 of the Act, In determining the written down value, a term which is defined in Section 10(5), of the assets the following has to be kept in view : in the case of assets acquired in the previous year the actual cost to the assessee and in the case of the assets acquired before the previous year the actual cost minus the depreciation actually allowed.

14. It is evident that the word "actual" by itself would give us very little assistance. It merely lays emphasis on the word it immediately follows. It is to be the cost, the whole cost and nothing but the cost. That can only be the meaning of the word "actual". It removes any question of estimate. The term "actual cost" cannot be read to mean anything more than cost accurately ascertained.

15. The ordinary dictionary meaning of the word "actual" is "existing In fact or fact as opposed to imaginary or past state of things". Likewise the dictionary meaning of the word "cost" is "what is laid out or suffered to obtain anything".

The word "depreciation allowance", as understood in the commercial field, is deduction from profits which a business man ordinarily makes with a view to making good the capital investment,, which, sooner or later, will have to be replaced on account of the wear and tear of the assets during the course of the business. It is thus clear that the said statutory provision, i.e., Section 10(2)(vi), permits an allowance to the assessee carrying on trade or business in respect of diminution in the value of their plant or machinery by reason of wear and tear. The assessee makes a deduction obviously from the profits and the deduction would be based on the value of the machinery and its expected life.

16. The phrase "actual cost", therefore, plainly indicates that the section is intended to confine the relief to an aggregate equal to the sum of money which the person has expended out of his own resources, called cost, of which the burden has ultimately fallen upon him. In other words, what a person expends on machinery seems to us to be the actual cost to him of acquiring and installing that machinery. The term therefore guides one to the conclusion that all expenditure on the machinery by the assessee will be the actual cost to the assessee. The actual cost therefore to the assessee is what he in fact expends or lays out for acquiring and installing the asset, in this case the machinery.

17. It is true that such an expenditure would vary from assets to assets and would depend upon its nature and availability. For example, in a case of cost of a cinema theatre, the said term would include the payment made to a third party for assistance in preparing plans for the construction and for securing permits, priorities, import licences and foreign exchange for the materials. It will include a profit paid by him to a contractor if one has been employed. In other kinds of assets, other sorts of expenditure might be included. No hard and fast rule can be laid down as to what items of expenditure will be included in that term. Nor is it advisable to make any attempt in that direction as there are bound to be innumerable and varying assets which are acquired. Each case depends and has to be decided upon the facts and circumstances of that case. It can, however, be broadly stated that in acquiring an asset of machinery, not only the invoice costs are to be included but the cost which the assessee incurs in transporting the machinery and erecting it for the purpose of his business will also have to be included in the said term. The services of the technicians or engineers necessary for designing and erecting the machinery including its supervisory cost will also have to be included in the said term.

18. Thus all expenditure incurred directly or intimately on the machinery can be said to be included in that term. It would not be correct to treat the words "actual cost" to mean the cost paid to the vendors of the machinery alone. The term being what it is, has to be, in our view, liberally construed.

19. But is it possible even under such a liberal construction of the term to include the interest paid by the assessee on the borrowed capital for the acquisition of machinery. In other words, can it be said that the amount of interest paid on the capital, which is used for the acquisition of the machinery, is a part of its actual

cost ? We do not think that the interest paid on the borrowed capital which went into the acquisition of the asset forms a part of its actual cost.

20. Now, the capital which has gone into the acquisition of the asset, in this case the machinery, may be the assessee's own capital or he may have borrowed it or even got it by way of subsidy or grant from the Government or any other authority. Once the amount comes into his hands, it becomes his own, irrespective as to by what mode and from what source he has received it. The amount in his hands would be his capital and it is that capital which he used in acquiring the assets on which the depreciation is claimed.

21. In *Corporation of Birmingham v. Barnes*, [1935] A.C. 292; 19 T.C. 195; 3 ITR 26, 30, 31 (H.L.) Lord Atkin observed at page 30:

"What a man pays for construction or for the purchase of the work seems to me to be the cost to him; and that whether some one has given him the money to construct or purchase for himself; or before the event, has promised to give him the money after he has paid for the work.; or after the event, has promised or given the money which recoups him what he has spent."

22. The learned Lord observed further at page 31:

"Here there are no qualifying words, and I think the phrase guides one to the conclusion that the expenditure on capital improvements by the person, regardless of source, will be the same as actual cost to the person, also regardless of source ".

23. We do not find any valid and compelling reason to hold that where a plant is constructed out of borrowed moneys, interest paid on the loan up to the date of commencement of the business can be capitalised and treated as part of the actual cost of the plant. In our view, it would not be correct to treat the interest paid on the borrowed capital on par with the services rendered or supervision made by technicians to select and erect the machinery and expenses incurred in that behalf. Because while interest is paid not on the acquisition of the asset but on borrowed capital and the fact that the borrowed money has gone into the acquisition of the plant may be a factor but is certainly not directly or intimately connected with the acquisition of the asset itself. The interest paid, therefore, is on the capital which he obtained by borrowing and has little to do with the actual cost to the assessee of the machinery which is his asset. It must be remembered that the source of capital is hardly relevant. What is relevant and pertinent is what actual cost the assessee has incurred in acquiring and erecting the machinery. We are, therefore, clear in our view that when Sections 10(2)(vi) and 10(5) speak of original and actual cost of machinery to the assessee, it only means the amount expended or laid out by the assessee in acquiring and installing machinery. The interest paid on the borrowed capital, which went into the acquisition of an asset, cannot, in our opinion, form part of the actual cost of the asset.

24. We are strengthened in our view by the following provisions of the Act expressing clearly the intention of the legislature. Section 19 of the 1961 Act relates to deductions from interest on securities. The income chargeable under the head "Interest on securities" is directed to be computed after making the deductions mentioned in that section. Clause (ii) of that section reads as follows:

"Any interest payable on moneys borrowed for the purpose of investment in the securities by the assessee."

25. Similarly, Section 24, which relates to deductions from income from house property, categorically allows deduction in Clause (vi) of Sub-section (1):

"Where the property has been acquired, constructed, repaired, renewed or re-constructed with borrowed capital, the amount of any interest payable on such capital."

26. Section 10(2)(iii) of the Act of 1922 itself provides a third category of cases where the legislature expressly allowed deduction of interest on borrowed capital. If the legislature wanted that interest paid on the borrowed capital, which went into the acquisition of an asset, should be deducted, nothing could perhaps have prevented the legislature from adding an Explanation as they did in fact to Sub-section (5) of Section 10 in regard to other matter to make this matter also very clear. Wherever the legislature wanted the interest on borrowed capital to be given as deduction, the legislature expressly provided for it. The absence of any provision in this behalf, therefore, is meaningful and supports the view which we have taken.

27. It was then argued that the accounting practice permits the capitalisation of interest and treats it as part of the cost incurred in acquiring the assets. Reliance in this behalf was placed on an extract appearing at page 15 of Members' Handbook Series No. 1 issued by the Institute of Chartered Accountants of India (Statement on Auditing Practices). Paragraph 2, 19 at page 15 reads :

"Interest on borrowings :

The question often arises as to whether interest on borrowings can be capitalised and added to the cost of fixed assets which have been created as a result of such expenditure. The accepted view seems to be that in the case of a newly started company which is in the process of constructing and erecting its plant, the interest incurred before production commences may be capitalised. "Interest incurred" means actual interest paid or payable in respect of borrowings which are used to finance capital expenditure. In no circumstances should imputed interest be capitalised, such as, interest on equity or preference capital at a notional rate. Interest on capital during construction paid in accordance with the provisions of Section 208 of the Companies Act, 1956, may, however, be capitalised as permitted by that section. Interest on monies which are specifically borrowed for the purchase of a fixed asset may be capitalised prior to the asset coming into production, i.e., during the erection stage. However, once production

starts, no interest on borrowing for the purchase of machinery (whether for replacement or renovation of existing plant) should be capitalised. For an existing business, the only interest which may be capitalised is interest paid for financing a completely new unit or a substantial expansion undertaken by the company. Even here, only the Interest on monies specifically borrowed for the new expansion may be capitalised and that only for the period before production starts. Interest payable on fixed assets purchased on a deferred credit basis should not be capitalised after commencement of production."

28. It need not be doubted that the method of accounting and allowing the interest paid on the borrowed capital to be capitalised for certain purposes is recognised in accounting practice. But merely because the method of accounting is followed in the way in which the above-said extract indicates, it does not necessarily follow that the legislature has adopted this principle when it said that the "actual cost" to the assessee of machinery should alone be deducted. How the assessee writes the accounts or what mode he adopts in treating a particular expenditure is hardly relevant. What is relevant is the actual words employed in the section and what meaning they give. We do not therefore think that merely because such commercial practice exists, we must interpret the term to include the interest after it is capitalised and added to the cost of the machinery as part of the actual cost of the machinery to the assessee within the meaning of Section 10(2)(vi).

29. It is true that if the statute is one passed with reference to a particular trade, business or commerce, and words are used therein which everybody conversant with that trade, business or commerce knows and understands to have a particular meaning in it, then the words are to be construed as having that particular meaning which may differ from the ordinary or popular meaning. But Section 10 is not legislated for any particular trade, business or commerce. It is a general legislation applicable to all those who get caught in its net. That apart, "actual cost" does not appear to be a technical business, trade or commercial term used as such and is known and understood in the way in which it is now sought to mean. The above-said extract does not make any claim of that sort. Furthermore, in order that an alleged trade, business or commercial use of a term shall prevail, it must appear that such commercial meaning is the result of established usage in business, trade or commerce and that, at the time of the passage of the Act, such usage was definite, uniform and general and not particular, local or personal. No such case, in our view, is made out in this case. Moreover, we feel that the interpretation we have placed on the said term is more agreeable to the object and intention of the legislature.

30. Let us then examine the authorities cited at the Calico Dyeing and Printing Works Vs. Commissioner of Income Tax, Bombay City-II, 273 is a case which pertains to Section 10(2)(iii) and renders us no assistance in this enquiry. In that case, the assessee-firm, which carried on the business of bleaching, dyeing and printing cloth, borrowed money in the year of account in order to extend its

business, purchased land and erected additional plant and machinery and paid interest on the borrowed capital. In its assessment to Income Tax in the relevant assessment year the claim of the assessee to the deduction of the interest so paid u/s 10(2)(iii) of the Act was rejected on the ground that the plant and machinery were not used for the business in the year of account. On a reference, the High Court of Bombay held that the assessee was entitled to the deduction claimed, even though the plant and machinery were not used in the year of account. That question does not, in our case, arise. Their Lordships dealing with Section 10(1) and (2) observed:

"Therefore, the scheme of Section 10(1) and (2) is clear. To start with, there must be a business which is being carried on for the purpose of earning profits and those profits are being assessed to tax. It is in respect of that business that the assessee claims various allowances u/s 10(2) and one of the allowances is depreciation, whether normal or initial."

31. And it is, in the context of the facts of that case, that their Lordships held"

"An assessee is entitled to claim interest paid on borrowed capital provided it is for the purpose of the business irrespective of what may be the result of using the capital which he has borrowed."

32. We are not concerned with any such question in this enquiry.

33. The next case cited to us is G. J. Coelho Vs. State of Madras, That was a case relating to the agricultural Income Tax. The assessee in his assessment to tax on his agricultural income from his plantation for the assessment year 1955-56 under the Madras Agricultural Income Tax Act, 1955, claimed deduction of the entire interest paid by him on monies borrowed for the purpose of purchasing plantation. Rejecting that claim, the Madras High Court held that the interest was not an allowable deduction u/s 5(k) of the Act as it was not an expenditure on the land within the meaning of that section. Their Lordships, however, held that the expenditure by way of payment of interest was not of a capital nature. The decision in that case was exclusively upon the language of the particular enactment, which fell for their Lordships* consideration and cannot be said to render any assistance to us. No observation in the said judgment is also useful for our purpose.

34. Then comes Habib Hussein Vs. Commissioner of Income Tax, Bombay City I, It is upon this decision that the two tribunals below have mainly relied. In that case, the assessee obtained a licence from the owner of a plot to enter upon the land and erect a cinema theatre, business premises and residential quarters on the land, on payment of a rental of Rs. 4,200 per month. For the purpose of erection of the theatre and starting the business, the assessee entered into an agreement with the owner of the plot, who was an influential businessman, by which the latter agreed to help the assessee in getting prepared suitable plans and designs for the cinema theatre and other buildings, in obtaining permission from the Bombay Municipality for constructing an additional sixth floor, in

procuring the required finance to enable the assessee to complete the construction of a modern theatre and other buildings, in procuring various priorities and permits for scarce materials including cement, steel and petrol for transport, in securing import licences for various goods for the purpose of the cinema theatre, in securing foreign exchange facilities to enable the assessee to import from abroad the goods required for the purpose of the theatre and other buildings and to advise the assessee from time to time during the course of construction of the cinema theatre and buildings. In consideration of the aforesaid services and assistance rendered by the owner, the assessee agreed to give the latter for a period of 20 years 2 per cent. of gross annual income earned by him in his cinema business. Subsequently, a new agreement was entered into by which the parties agreed that in full satisfaction of payment of 2 per cent. of the annual gross income for 20 years as provided in the original agreement, the assessee should pay to the owner a sum of Rs. 3,30,000 within a period of five years by twenty quarterly instalments of Rs. 16,500. The amount of Rs. 3,30,000 was debited by the assessee at the close of the account year. The assessee claimed in the subsequent accounting year that the said sum should be included in the actual cost of the depreciable assets to the assessee for the purpose of determining the depreciation allowance allowable to him u/s 10(2)(vi) of the Act.

35. The Bombay High Court held that the meaning of the expression "actual cost to the assessee" as used in Section 10(5) of the Act was what the assessee had, in fact, expended or laid out for the purpose of acquiring the depreciable assets; the expenditure incurred in getting prepared suitable plans and designs for the construction of the cinema theatre, for construction of a minuet theatre, for securing various priorities and permits for scarce materials including cement, steel, piping and petrol for transport, in securing import licences for various goods for the purpose of the cinema theatre, and for securing foreign exchange facilities to enable the assessee to import from abroad goods required for the purpose of the said cinema theatre was liable to be included in the cost of the depreciable assets to the assessee and that, therefore, such portion of the remuneration as was attributable to these services should be included in the cost of the depreciable assets.

36. Their Lordships specifically declined to allow the deduction claimed by the assessee in regard to the commission amount which the assessee had paid for procuring the capital which went into the construction of the property. It was categorically observed :

"It is clear that the services mentioned in Clauses (b), (c), (e) and (j) cannot be said to be in any manner connected with the acquisition of the depreciable assets."

37. This decision supports the view which we have taken that not every item of expenditure which is indirectly or remotely connected would go as part of the cost of the asset but it is only those items which are directly and intimately connected with the acquisition of an asset that may be included in the term

"actual cost" within the meaning of Section 10(2)(vi). That is why their Lordships, while allowing some items, rejected the others. This decision, however, is not authority for the proposition that interest paid on the borrowed capital also comes within the term "actual cost" to the assessee.

38. The only decision which takes the view which can be said to be contrary to our view is Commissioner of Income Tax (Central) Vs. Standard Vacuum Refining Co. of India Ltd., 802, 808 We have, therefore, very closely and carefully examined this decision. In that case, the assessee-company borrowed moneys on debentures in June, 1953, interest to run from that date, and utilised the amount along with other moneys financed by it for setting up a refinery which started work on September 1, 1954. All expenses incurred during the period of construction including a sum of Rs. 23,53,284 being the interest which had accrued on the aforesaid debentures from the date of the borrowings to the date of commencement of the business were capitalised and depreciation on the full amount was claimed. The Tribunal had held that the assessee-company was entitled to depreciation on the capitalised interest also. On a reference to the High Court by the department, the Calcutta High Court held :

"The interest paid on the debentures issued formed part of the actual cost incurred by the assessee-company in acquiring the capital asset and under Sections 10(2)(vi), 10(2)(via), 10(2)(vib) read with Section 10(5), such interest must be taken into consideration for the purpose of depreciation and development rebate."

39. This conclusion was reached on a set of reasoning. The judgment states;

" Capital asset may be acquired by the assessee either out of his own savings or with borrowed capital. When capital asset is acquired with borrowed capital the assessee is ordinarily required to pay interest on such amount borrowed while the capital asset is being acquired, that is to say, until it is fit for the commencement of business. Expenses are incurred by the assessee in paying for the other materials including machinery for the construction of the capital asset, in paying wages of labourers engaged for the work of construction and in paying remuneration to erection engineers, architects, designers, etc. It is not disputed that such expenses do form part of the actual cost to the assessee in acquiring the capital asset. If a machine is imported from abroad, amounts paid on account of freight and for transporting it from the harbour to the factory site certainly form part of the actual cost to the assessee in acquiring the capital asset. In the case of a machine, invoice price alone is not the actual cost; certain other expenses incurred in installing the machine also enter into the actual cost. Whatever expenses are essential to the erection of the capital asset are certainly included in the actual cost to the assessee."

40. So far as these reasons go, there can hardly be any quarrel. Their Lordships, however, further observed:

"When a capital asset is acquired by an assessee with his own money he is not

required to pay any interest; so it may be argued that payment of interest is not essential to the acquisition of a capital asset but this argument does not bear scrutiny. Employment of an erection engineer may be necessary in one case and may not be necessary in another. From this it cannot be said that in an appropriate case the employment of an erection engineer is not essential to the erection of a factory. Similarly, where an assessee cannot acquire a plant except with the aid of a loan, the loan is essential to him for the acquisition of the plant, and payment of interest being essential to the procurement of loan, payment of interest too must be regarded as essential to the acquisition of the plant."

41. With due respect to the learned judges, we find it very difficult to see the similarity between the instances mentioned. It may be that for the purpose of erection of a factory, consultation of an engineer in a particular case may not be necessary. But then since no cost on account is incurred it will not be computed towards interest. What similarity that example bears with the payment of interest is not quite clear. Merely because a person is hard pressed for money and has necessarily to borrow for the purpose of acquiring an asset, that by itself need not drive one to the conclusion that payment of interest since it became essential to a particular person forms part of acquisition cost of the machine. We have already indicated and we are supported by an English authority of the House of Lords that source of capital is hardly relevant. It was argued before their Lordships on behalf of the revenue that when interest is paid even after the commencement of the business, such interest, must be added to the cost of the plant. It was repelled in the following manner :

"The short answer is that such interest is paid after the plant has been established and hence, it cannot form part of the cost of establishing the plant."

42. It is difficult to appreciate this reasoning. If the interest on borrowed capital forms part of the actual cost of the machinery to the assessee, then till the depreciation is permissible the interest paid on such borrowed capital should necessarily fall within the ambit of that term. How does the commencement or non-commencement of the business alter this situation surpasses our comprehension.

43. It may be that the interest paid on the borrowed capital after the commencement of the business is sought to be brought within Section 10(2)(iii) and, therefore, the assessee may not be interested as it is not in his interest to claim depreciation on the interest paid on the borrowed capital, which went into the acquisition of the estate. The deduction u/s 10(2)(iii) would definitely be much more than what is deducted by way of depreciation u/s 10(2)(vi). Whether the capital borrowed before the business commenced and which went into the erection of machinery can be said to fall within the meaning of Section 10(2)(iii) or not, does not fall for our consideration in this case. But merely because the assessee claims the interest u/s 10(2)(iii) after the commencement of the business, assuming that it is done validly, even then how the real position which existed, that is to say, that the interest which was paid on the borrowed capital

and which formed part of the actual cost, according to the said decision, would alter its position merely because of the commencement of the business ?

44. It cannot be actual cost before the commencement of the business and subsequent thereto become a borrowed capital for the purpose of business within the meaning of Section 10(2)(iii), We do not, therefore, consider that this aspect should have any impact upon the question which falls for our consideration in this case.

45. Their Lordships further stated :

"On general principle there is scarcely any distinction between payment made to a supervisor who supervises the erection of a plant and the payment made by way of interest on the amount borrowed for the acquisition of the capital asset. If payment to a supervisor is an element in the actual cost incurred by the assessee in having the plant, there is no reason why payment of interest should not be an element in such cost."

46. We have already stated that these two instances have very little in common between them, and as we are clearly of the opinion that the source of the capital is not relevant for the purpose of this enquiry, this reasoning also does not impress us much.

47. Their Lordships then referred to the practice prevailing in the commercial circles to which we have already made reference and expressed our opinion in that behalf.

48. This is all the reasoning which the learned judges have given to reach the conclusion to which they reached that interest paid on borrowed capital forms part of the actual cost of the machinery to the assessee within the meaning of Section 10(2)(vi). With profound respect to the learned judges who expressed that opinion, we find it very difficult to accept that view as correctly interpreting Section 10(2)(vi) read with Section 10(5). We have already narrated the reasons which compel us to take the view which we have taken. We are, therefore, satisfied that the Appellate Assistant Commissioner and the Tribunal have erred in allowing the deduction u/s 10(2)(vi) for the interest paid on the borrowed capital. We would, therefore, answer the reference in the negative, in favour of the department and against the assessee. The assessee will pay the costs to the department.