

(1992) 02 CAL CK 0033

In the Calcutta High Court

Case No : Income-tax Reference No. 81 of 1988

Commissioner of Income Tax

APPELLANT

Vs

Cominco Binani Zinc Ltd.

RESPONDENT

Date of Decision : 18-02-1992

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (1993) 204 ITR 56

Hon'ble Judges : Shyamal Kumar Sen, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : Pal, for the Appellant;

Judgement

Shyamal Kumar Sen, J.—In this reference u/s 256(1) of the Income Tax Act, 1961, the following question has been referred to this court for determination :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure incurred by the assessee-company on re-routing of the water pipeline is a revenue expenditure and is deductible expenditure ?"

2. The facts as appear from the statement of case, inter alia, are as follows :

The assessee-company carries on the business of manufacture of zinc slabs with sulphuric acid and cadmium as by-products. The assessee-company included a sum of Rs. 4,77,080 under the head "Repairs and maintenance and others" being expenditure included for the water pipeline including cost of pipes, labour charges and electrical inspection charges. The Income Tax Officer disallowed the said expenditure as capital expenditure.

3. On an appeal having been preferred before the Commissioner of Income Tax (Appeals), it was stated that, during the summer season, the flow of water in the river Periyar is restricted and the sea water enters the Periyar river causing more salinity in the water, thereby making it impossible to use the river water near the

factory area. For preventing the sea water entering the Periyar river every year, steps are taken for putting up a bund across the river but at times in certain years, the salinity increases in the river much earlier. This necessitates re-routing of the pipeline and in this process adding additional pipelines for taking the pipeline upstream of the river further away with temporary bunding arrangements where the saline-free water is available for the purpose of factory operations. In the relevant year, the salinity problem was acute and, therefore, it became essential to re-route the pipeline connection with some more additions and to take the line further upstream for drawing saline-free water for operation. It was submitted that similar course of action had been taken in the past and it is because of avoiding expenditure on such re-routing that a temporary bund is put up every year with the help of other business concerns similarly placed.

4. The Commissioner of Income Tax (Appeals), on a consideration of the facts and submissions made, held that the expenditure incurred for the water pipeline is not an expenditure of a capital nature and that it was incurred in order to enable the assessee-company to carry on its business.

5. The Tribunal found that the facts recorded by the Commissioner of Income Tax (Appeals) in his order have not been disputed before the Tribunal.

6. The Tribunal further found that there already existed a pipeline for bringing saline-free water from the Periyar river to the factory of the assessee. In the relevant year, the salinity problem was acute and, therefore, it became necessary to re-route the pipeline connection and to take the pipeline further upstream for getting saline-free water for operation. The Tribunal found that, from the facts of the case, it is clearly established that the expenditure on re-routing the pipeline had to be incurred by the assessee-company in order to enable it to carry on the business. In fact, the finding recorded by the Commissioner of Income Tax (Appeals) has not been challenged before the Tribunal by the Department. The Tribunal further found that re-routing of the pipe was not a new feature. Similar course of action had to be taken in the past also. According to the Tribunal, it cannot be said that the expenditure incurred on re-routing the pipeline for the purpose of getting saline-free water for the factory resulted in a benefit of an enduring nature. The Tribunal accepted the finding recorded by the Commissioner of Income Tax (Appeals) that the expenditure incurred on re-routing of the pipeline is a revenue expenditure.

7. It was submitted on behalf of the Revenue that the expenditure of Rs. 4,77,080 incurred by the assessee on the pipeline brought into existence a capital asset and that the expenditure was rightly disallowed by the Income Tax Officer being capital in nature. In this connection, it was also stated that the expenditure resulted in a benefit of enduring nature and, hence, it was rightly disallowed. Reliance has been placed on the decision of this court in the case of Commissioner of Income Tax Vs. North Dhemo Coal Company Ltd., .

8. It contended that the expenditure of Rs. 45,000 spent on construction of a

bund was also capital in nature and was rightly disallowed by the Income Tax Officer. It was submitted by Dr. Pal, learned advocate, for the assessee, on the other hand, that the expenditure of re-routing the pipeline had to be incurred to enable the assessee-company to carry on its business and, therefore, it was a revenue expenditure which has been rightly allowed by the Commissioner of Income Tax (Appeals). In this connection, it was also submitted that the expenditure incurred by the assessee did not result in any benefit of enduring nature. It was also pointed out that there was already in existence a pipeline for drawing water from the river Periyar for operational purposes and that for preventing sea water from entering the river, the assessee had to re-route the pipeline by taking it upstream so that saline-free water was available to the assessee for operating its factory. The expenditure included replacement and repairing of old pipes as well as adding some more pipes for the purpose of re-routing the pipeline. Reliance was placed on the decision of the Gujarat High Court in the case of Sarabhai M. Chemicals Pvt., Ltd. Vs. Commissioner of Income Tax, Gujarat-I, .

9. It was further contended that the expenditure of Rs. 45,000 was incurred on construction of a temporary bund on the same river so that saline-free water was available for operating the factory. It was pointed out that construction of such a temporary bund was an annual feature and that such an expenditure did not bring into existence any permanent asset or a benefit of an enduring nature. The expenditure was thus revenue in nature and had been rightly allowed by the Commissioner of Income Tax (Appeals).

10. It was submitted on behalf of the assessee that the conclusion of the Tribunal is correct and justified. If an expenditure is incurred by an assessee for the purpose of improving the profitability of its existing profit-making apparatus and to ensure supply of saline-free water for more effective running of its business and for better productivity, the expenditure incurred is to be treated as revenue expenditure. The re-routing of the pipeline and the cost incurred therefore were incurred as incidental to the business carried on by the assessee and for enabling the assessee to carry on the business of manufacture of its products with saline-free water. The Tribunal found that the facts recorded by the Commissioner of Income Tax (Appeals) had not been challenged before the Tribunal.

11. The Commissioner of Income Tax (Appeals) found that for bringing saline-free water from the Periyar river to the factory of the assessee, the salinity problem was acute and, therefore, it was necessary to re-route the pipeline connection and to take the pipeline further upstream for getting saline-free water for the operation of its factory. The expenditure was incurred as an operational expense and the expenditure was incurred for running and working the factory with a view to earn more profit and was, therefore, in the nature of revenue expenditure.

12. In the case of Commissioner of Income Tax Vs. Panbari Tea Company Limited, it was held that the expenditure incurred for laying service lines for

carrying on the business of growing and manufacturing of tea was held to be revenue expenditure.

13. The expenditure incurred by the assessee-company by way of contribution towards the construction of roads was held by the Supreme Court to be revenue expenditure as the said roads were advantageous to the business of the assessee as they facilitated the transport of sugarcane to its factory and outflow of manufactured sugar from the factory to the market centre. The construction of the road facilitated the business operations of the assessee and enabled the management and conduct of the assessee's business to be carried on more efficiently and profitably. It was true that the advantage secured for the business of the assessee was of a long duration inasmuch as it would last so that the roads continued to be in a motorable condition but it was not an advantage in the capital field because no tangible or intangible asset was acquired by the assessee nor was there any addition or expansion of the profit-making apparatus of the assessee and the amount was held to be of a revenue nature.

14. In the case of *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax*, following the decision of Lord Radcliffe in *Commr. of Taxes v. Nchanga Consolidated Copper Mines Ltd.* [1965] 58 ITR 241, it was held by the Supreme Court at page 10 of the said report *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax*, that 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 an 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 principles laid in this test, provided by Lord Cave L. C. in *Atkerton v. British Insulated and Helsby Cables Ltd.* [1925] 10 TC 155 (HL). 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.

15. The Supreme Court, in that case, quotes with approval the observation of the House of Lords in *IRC v. Carren Co.* [1968] 45 TC 18. The House of Lords in that case observed that the expenditure incurred for obtaining a revised charter eliminating those features of antiquated provisions which operated as impediments to the profitable development of the assessee-company was of a revenue nature and the said expenditure was incurred for facilitating the day-to-day trading operations of the assessee-company and enabling the management and conduct of the assessee's business to be carried on more efficiently even

though by altering the memorandum, the assessee was gaining advantage for an indefinite period.

16. In the case of Sarabhai M. Chemicals Pvt., Ltd. Vs. Commissioner of Income Tax, Gujarat-I, , the payment was made for securing or augmenting the electrical power supply, so that the profit-making apparatus could be operated with greater productivity. The expenditure was held to be of a revenue nature.

17. In the case of Commissioner of Income Tax Vs. Anand Gum Industries, it was held that the expenditure for installation of poles and laying additional power lines was of a revenue nature.

18. For the reasons aforesaid, we do not find any infirmity in the order of the Tribunal.

19. Accordingly, the question is answered in the affirmative and in favour of the assessee.

20. There will be no order as to costs.

Ajit K. Sengupta, J.

21. I agree.