

(1999) 11 GUJ CK 0043
In the Gujarat High Court
Case No : IT Application No. 216 of 1999

Commissioner of Income Tax	Vs	APPELLANT
Emtici Engineering Ltd.		RESPONDENT

Date of Decision : 24-11-1999

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2), 80G

Citation : (2000) 158 CTR 410 : (2000) 242 ITR 86 : (2003) 128 TAXMAN 265

Hon'ble Judges : K.M. Mehta, J;B.C. Patel, J

Bench : Division Bench

Advocate : B.B. Nayak and Manish R. Bhatt, for the Appellant; R.K. Patel, for the Respondent

Judgement

1. The CIT, Gujarat Central, Ahmedabad, has preferred this application under s. 256(2) of the IT Act, 1961 [hereinafter referred to as the Act] as the application preferred before the Tribunal under s. 256(1) came to be rejected on 11th Sept., 1998.

2. The assessee indicated in his P&L a/c donation aggregating to Rs. 3,50,145 out of which a sum of Rs. 2,50,000 given as donation to Gujarat Cricket Club was the subject-matter. 100 per cent deduction was claimed, claiming that the expenditure was in the nature of staff welfare activity. It was pointed out to the AO that the said expenditure was claimed on the ground of commercial expediency in order to facilitate the carrying on business indirectly, by satisfying the needs of executives and staff. The AO held that the benefit of enduring nature has accrued to the assessee-company, and, therefore, the same has resulted in acquisition of capital asset. It seems that the CIT(A) hearing the appeal against the order passed by AO was not satisfied with regard to the finding of fact recorded by the AO. CIT(A) had an apprehension in the mind that out of 12 seats, assessee could reserve 6 seats for directors, members of their family or their distinguished guests, and hence directed the AO to verify the claim and allow deduction under s. 80G of the Act.

3. The Tribunal expressed its view in favour of the assessee and hence this application is preferred praying to refer the following question :

"Whether the Tribunal is right in law and on facts in holding that the amount of Rs. 2.5 lacs contributed by the assessee to the Gujarat Cricket Association cannot be treated as of capital nature and directing the AO to allow the same as revenue expenditure ?"

4. The Tribunal is the final fact-finding authority. This Court is required to exercise the jurisdiction if there is a substantial question of law raised by either party. In the instant case, from the assessment order, despite specific case pleaded before the AO, the AO has not recorded any finding of fact in that behalf, that is to say whether the expenditure was in the nature of staff welfare activities or not. Further it appears that the AO concentrated on the aspect that the benefit which has accrued in favour of the assessee is in the nature of enduring nature, and therefore, the expenditure must be considered as capital expenditure as it has ultimately resulted in acquisition of capital asset.

5. The Tribunal accepted the facts pleaded, and pointed out that in the absence of any evidence that seats are reserved for the directors or their family members only, merely on the basis of apprehension that they could be used only by them, the Department cannot disallow the claim. The Tribunal further observed that an expenditure can be considered as capital in nature only when any capital assets had been created by the assessee by the expenditure. It was not disputed before the Tribunal that the assessee had no proprietary right on the seats which had been promised by the association to be allotted at the time of any event or game. The Tribunal, therefore, held that the capital structure of the company has not been increased by the said contribution and, therefore, the contribution cannot be treated as capital expenditure.

6. The apex Court in the case of *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax*, has pointed out as to when a payment is to be considered as revenue or capital in nature. In the said decision, the apex Court also considered the decision in the case of *Commissioner of Taxes vs. Nchanga Consolidated Copper Mines Ltd.* (1965) 58 ITR 241 : TC 16R.991 and the apex Court pointed out as under :

"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 vs. Nchanga Consolidated Copper Mines Ltd.* (1965) 58 ITR 241 : TC 16R.991 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, nonetheless, 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"

7. It seems that the Tribunal, considering the decision as aforesaid and on the material placed before it, arrived at a conclusion. In our view, therefore, it cannot be said that any question of law arises in this matter, and hence the application should be rejected.

7.1. The Tribunal has directed the AO to deduct the aforesaid amount from the computation of income of the assessee. We are not required to state in this proceedings as to under what head the expenditure is to be treated, in view of the directions given by the Tribunal, and submissions made in this regard by learned counsel for the Revenue has no merit.

8. Application is rejected, with no order as to costs.