
(1996) 05 GAU CK 0018
In the Gauhati High Court
Case No : IT Ref. No. 18 of 1991

Commissioner of Income Tax

APPELLANT

Vs

India Carbon Ltd.

RESPONDENT

Date of Decision : 28-05-1996

Acts Referred:

Income Tax Act, 1961 — Section 143, 256

Citation : (1997) 137 CTR 517

Hon'ble Judges : D.N. Baruah, J

Bench : Single Bench

Judgement

D.N. Baruah, J.—In this reference under s. 256(1) of the IT Act, 1961, the following two questions have been referred for opinion of this Court :

1. Whether the Tribunals finding that the expenditure of Rs. 1,38,000 incurred by the assessee for obtaining a feasibility report for converting coke plant to a cement plant is not a capital expenditure is sustainable in law ?

2. Whether the Tribunal was justified in allowing the claim of deduction of Rs. 1,38,000 as revenue expenditure ?

2. The assessee is a company carrying on a business of manufacturing of petroleum coke. But for some reasons, the assessee-company found that the said calcination plant at Budge Budge was not going well since 1979, and the assessee-company explored the possibility of manufacturing of cement. For that purpose, the assessee-company entrusted the two companies, namely, J. C. B. Pvt. Ltd., and J. R. C. I. Ltd., to submit a feasibility report for converting the existing Coke kiln to a cement plant without making any disturbances of the existing plant and for that purpose obtaining the feasibility report the assessee-company defrayed expenses of Rs. 38,000 and Rs. 1,00,000 in total Rs. 1,38,000. As per the feasibility report the project was not found viable and feasible by the company to convert the existing coke plant to a cement plant, therefore, the desire to convert the existing plant, i. e. the coke plant to a

cement plant was abandoned.

For the asst. yr. 1985-86, the assessment was completed under s. 143(3) of the IT Act, 1961, and the AO disallowed the claim of deduction of Rs. 1,38,000 as the AO considered the expenditure of Rs. 1,38,000 spent for obtaining the feasibility report was not pertaining to the existing business of the assessee-company and, consequently, it was disallowed. The matter was taken up by the assessee-company to the CIT(A), by preferring an appeal. The CIT(A) after considering all the aspects, affirmed the decision of the AO and, therefore, the assessee-company went on appeal before the Tribunal. The Tribunal, by the order dt. 28th Aug., 1990, reversed the finding of the CIT(A) holding that the expenditure incurred by the assessee-company for obtaining the feasibility report would not be considered as capital in nature and the claim of the assessee-company was accordingly allowed. At the instance of the Revenue, the above two questions have been referred for opinion.

3. We have heard Mr. Joshi, learned standing counsel appearing on behalf of the Revenue, and Dr. Saraf, learned counsel appearing on behalf of the assessee-company. Mr. Joshi submits that the cement plant is quite different from the existing coke plant and conversion of the existing plant to a cement plant is nothing but an establishment of a new plant and if it is a new plant, the amount of any expenditure to make such an establishment will be capital expenditure and not a revenue expenditure. Learned counsel further submits that it is not possible to convert the existing coke plant to a cement plant without making addition of new machinery. So for all practical purposes conversion would amount to a new establishment of a new plant. Besides, the conversion could not be materialised in view of the report, therefore, under no circumstances such expenditure can be said to be a revenue expenditure. Dr. Saraf, learned counsel, on the other hand, submits that the assessee-companys aim is to convert the plant with the existing machinery without much disturbing the existing superstructure and the machinery. That was the desire of the assessee-company and with that view the assessee contacted the aforesaid two companies, namely, J. C. B. Pvt. Ltd. and J. R. C. I. Ltd., to find out the feasibility of converting the existing plant to a cement plant. However, the feasibility report gave a negative view by saying that such plant will not be viable technically and financially. Therefore, the amount spent was nothing but for improvement or the conversion of the existing plant to a cement plant without making any violation to the existing machinery and superstructure. On the rival contention of learned counsel appearing on behalf of the parties, it is to be seen whether the amount of Rs. 1,38,000 spent by the assessee-company can be said to be a revenue expenditure or a capital expenditure. There is no doubt that any expenditure made for setting up of a new plant like that for obtaining of a feasibility report for setting up a new plant will be a capital expenditure. But, in the instant case, an endeavour was made by the assessee to improve the financial condition by making an alternative measure for some other production which is economically viable. When in a particular plant some improvement is made by diversion of the

business without doing much harm to the existing plant, in our opinion, it will be an existing plant with improvement. It cannot be said to be a new plant when some modification is made to the existing plant. The assessee's endeavour was to manufacture cement by using the same kiln and the assessee wanted to know whether it was possible and for that purpose the aforesaid two companies had been appointed, though the feasibility report said that it was not possible. In our opinion, the assessee was to make improvement by converting the existing plant to a cement plant with little modification. Most of the machinery and superstructure was not to be disturbed as per the assessee-company. Dr. Saraf has drawn our attention to a decision in CIT vs. Elecon Engineering Co. Ltd. (1981) 132 ITR 752 wherein the Gujarat High Court had occasion to consider a similar question. In the said case, the assessee was carrying on the business of manufacturing engineering equipment of various kinds. In the accounting year relevant to the asst. yr. 1967-68, one of its directors was sent abroad by the assessee for the selection of some foreign engineers with a view to start the manufacture of aerial ropeways, which were used for transporting of machines as well as human beings. The assessee did not manufacture aerial ropeways earlier. The ITO found that in the directors report it was clarified that the company had decided to start the designing and manufacture of aerial ropeways for passenger traffic and handling materials on a turnkey basis to overcome the effects of competition and with a view to diversify its activities. The assessee claimed deduction of the amount diverted/spent in sending one of the directors abroad. The appeal was disallowed and the Tribunal, however, reversed the finding and held that this amount was deductible as revenue expenditure. On a reference the High Court held that since there was no proposal to add to the fixed capital of the assessee-company even at a later date and all that was done was to utilise the existing machinery and knowledge of the company more efficiently and in a better manner, the foreign tour expenditure aggregating the expenditure incurred for sending the director abroad was held to be the revenue expenditure and thus deduction was allowed.

4. In our opinion, in this case also the very idea of the assessee was to find out the feasibility for converting the existing plant to the cement plant without much disturbing the existing plant. Therefore, in our considered view, this expenditure incurred in obtaining the feasibility report will be a revenue expenditure and not a capital expenditure.