

(1995) 03 SC CK 0139

In the Supreme Court Of India

Case No : Civil Appeals No"s. 2740 to 2742 of 1977 (From the judgment and order dt. 6th April, 1976, of the Calcutta High Court in IT Ref. No. 78 of 1970 reported as CIT v. Indian Oxygen Ltd. (1978) 112 ITR 1025 (Cal)) , 29th March, 1995

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

INDIAN OXYGEN LTD.

RESPONDENT

Date of Decision : 29-03-1995

Acts Referred:

Income Tax Act, 1961 — Section 37(1)

Citation : (1996) 134 CTR 372

Hon'ble Judges : B P Jeevan Reddy, G T Nanavati

Bench : Division Bench

Final Decision : Dismissed

Judgement

BY THE COURT :

These appeals are preferred against the judgment of the Calcutta High Court [reported as Commissioner of Income Tax Vs Indian Oxygen Ltd answering the question referred to it in the affirmative, i.e., in favour of the assessee and against the Revenue. The question referred was :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 2,97,480 paid by the assessee to the British Oxygen Co. Ltd., London, in pursuance of the agreement dt. 1st Oct., 1959, was a permissible deduction under s. 37(1) of the IT Act, 1961 ?"

2. After examining the various clauses in the agreement between the assessee and the British Oxygen Co. Ltd., the High Court found as follows :

"The English company did not sell any information, processes and inventions to the Indian company. Under cl. 22 of the agreement, the Indian company is not entitled to use them after the termination of this agreement. The Indian company is prohibited from disclosing these information, processes and

inventions during the currency and also after the determination of this agreement in view of its cl. 11. Though this agreement is for a period of ten years, it can be terminated earlier as provided in cl. 23. Therefore, it cannot be said that the Indian company has incurred the expenditure for the purposes of bringing into existence any asset or advantage of an enduring nature. It must also be held that this expenditure is not a capital but a revenue expenditure, for it was incurred by the Indian company for running its business or working it with a view to produce profits."

We are of the opinion that the said understanding of the agreement is correct. Once it is so, the amount paid by the assessee to the British company cannot be treated as capital expenditure. It is nothing but revenue expenditure and has been rightly held so by the High Court.

The appeals accordingly fail and are dismissed. No costs.