

(1999) 07 DEL CK 0109

In the Delhi High Court

Case No : Income Tax References No. 130-131/78

Commissioner of Income Tax

APPELLANT

Vs

M/s. Engineers India Ltd.

RESPONDENT

Date of Decision : 29-07-1999

Acts Referred:

Citation : (1999) 5 AD 36 : (1999) 80 DLT 798 : (1999) 50 DRJ 736 : (1999) 239 ITR 237

Hon'ble Judges : D.K. Jain, J;Arun Kumar, J

Bench : Division Bench

Advocate : Mr. R.C. Pandey and Mr. Ajay Jha, for the Appellant; Ms. Anjali Verma, for the Respondent

Judgement

D.K. Jain, J.—At the instance of the Revenue, in respect of assessment year 1972-73, the following question has been referred by the Income tax Appellate Tribunal, Delhi Bench, u/s 256(1) of the Income tax Act, 1961 (for short "the Act"), for the opinion of this Court :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the admission fee of Rs. 90,000/- paid by the assessed to M/s. Fractionization Research Inc. was admissible as a revenue expenditure ?"

2. The assessed is a public sector under taking and derives income for supply of technical know-how to various concerns in India and abroad. It also undertakes turn key projects in India and abroad. During the previous year, ended on 31 March, 1972 and relevant to the assessment year 1972-73, the assessed paid Rs. 90,000/- to M/s. Fractionization Research Inc. as initial admission fee for its membership and claimed it as revenue expenditure. The said organisation is a cooperative research organisation and supplies to its members information concerning mathematical models which can be used for rational designing of vapour liquid contracting systems.

3. While computing total income for the relevant assessment year, the Income tax Officer disallowed the said claim and treated it as capital expenditure on the ground that this gave the assessed an asset or advantage of an enduring nature. Being aggrieved by the said disallowance, the assessed preferred appeal to the Appellate Assistant Commissioner of Income Tax. The Learned Appellate Assistant Commissioner, while observing that the said fee was paid once for all for the advantage that the company derives by becoming a member of that organisation, endorsed the view taken by the Income Tax Officer. The matter was carried by the assessed in further appeal to the Tribunal. The Tribunal was, however, of the view that the initial payment itself did not ensure any lasting benefit to the assessed by way of continuous flow of information regarding research in its field. It would necessarily depend upon the subsequent annual payment of subscription. The Tribunal held that the payment of membership fee by itself did not bring into existence any a set or advantage of enduring nature to the assessed and, Therefore, such expenditure could not be treated as capital expenditure. Accordingly, the Tribunal directed the Income Tax Officer to allow the admission fee paid as revenue expenditure. This decision of the Tribunal has given rise to the question referred for opinion.

4. We have heard learned counsel for the parties.

5. The question which arises for consideration is whether the payment of membership fee to the aforementioned organisation is revenue or capital in nature, for it has not been disputed by the Revenue that the payment was for the purposes of assessee's business. The question whether an expenditure is capital or revenue in nature is a vexed question, because the line of demarcation between the two is very thin. It has not been possible to lay down any single or exhaustive test as infallible or any single criterion as decisive for determination of the question. However, attempts have been made from time to time to outline some broad factors to be taken into consideration to distinguish capital from revenue expenditure. One rough and ready test, which is usually being followed, is to try to ascertain whether a particular expenditure brings about "enduring benefit" to the assessee. In *Assam Bengal Cement Co. Ltd. Vs. The Commissioner of Income Tax, West Bengal*, the Supreme Court observed that if the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it is properly attributable to capital and is of the nature of capital expenditure. If on the other hand, it is made only for running the business or working it with a view to produce the profits, it is a revenue expenditure.

6. Judged by the standard of enduring benefit, we are of the opinion that the Tribunal has rightly come to the conclusion that initial membership fee paid by the assessed has to be allowed as revenue expenditure. By making payment of the initial fee, the assessed had just acquired the membership of M/s. Fractionization Research Inc. and became eligible to receive from them information regarding mathematical models for its further development. But a

mere membership did not entitle the assessed to get the said information till the prescribed subscription was paid to them from year to year. Despite membership, if the annual subscription is not paid, the assessed will not receive any technical information from the said organisation. Admittedly, the annual subscription has been treated as revenue expenditure. In the event of default in the payment of yearly subscription for any reason, supply of further information may be stopped to the assessee, even though it continues to be a member of the organisation. Thus, it cannot be said that on payment of initial membership fee, the assessed acquired an asset or an advantage for the "enduring benefit" of its business. The furnishing of periodical information by the said organisation to the assessed was directly dependent upon the assessor's paying annual subscription to them and not on assessed being their member. In this view of the matter, we feel that the membership of the organisation did not per se bestow on the assessed any asset or advantage of enduring nature, which in the present case was the right to constantly receive latest technical information from the aforementioned organisation, that may be found useful for improvement, expansion and diversification of its activities, so as to constitute capital expenditure. In our opinion, the Tribunal was right in holding that the expenditure incurred by the assessed on account of initial membership fee paid to the said organisation could not to be said to be capital expenditure and that it shall have to be regarded as an expenditure revenue in nature.

7. For the foregoing reasons, the question is answered in the affirmative i.e. in favor of the assessed and against the Revenue. There will, however, be no order as to costs.