
(1990) 10 RAJ CK 0004

In the Rajasthan High Court

Case No : Income Tax Reference No. 48 of 1989

Commissioner of Income Tax

APPELLANT

Vs

Multi Metals Ltd.

RESPONDENT

Date of Decision : 27-10-1990

Acts Referred:

Income Tax Act, 1961 — Section 35D(2)

Citation : (1990) 88 CTR 1 : (1991) 188 ITR 151

Hon'ble Judges : K.C. Agrawal, C.J.;B.R. Arora, J

Bench : Division Bench

Advocate : V.K. Singhal, for the Appellant; N.M. Ranka, J.K. Ranka and A.K. Mahamwal, for the Respondent

Judgement

K.C. Agrawal, C.J.—The following two questions have been referred by the Income Tax Appellate Tribunal u/s 256 of the Income Tax Act, 1961, for the opinion of the High Court at the instance of the Commissioner of Income Tax, Jaipur :

" 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the fees paid to the Registrar of Companies for raising the authorised capital of the assessee-company was allowable as revenue expenditure ? and

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the fees paid to the Registrar of Companies for raising the authorised capital of the assessee-company was covered by Sub-clause (2)(c)(iv) of Section 35D of the Income Tax Act, 1961 ?"

The assessee is a limited company which paid Rs. 60,000 as fee for registration to the Registrar of Companies as required under the Companies Act, 1956, for amendment of the memorandum of association for raising the authorised capital from Rs. one crore to Rs. five crores. The assessee claimed that the fee paid to the Registrar of Companies was revenue expenditure and as such it was entitled

to get a deduction for the same. The Income Tax Officer treated the registration fee paid by the assessee as capital expenditure. Aggrieved, the assessee went up in appeal to the Commissioner of Income Tax which was allowed by the Commissioner of Income Tax by his order of December-23, 1986. He reversed the order of the Income Tax Officer by holding that the expenditure of Rs. 60,000 claimed by the assessee was a revenue expenditure and should be allowed as such. For the assessment year 1976-77, the Revenue was aggrieved by the order of the Commissioner of Income Tax (Appeals) in holding the fee paid to the Registrar of Companies for raising authorised capital of the companies as revenue expenditure. The Appellate Tribunal, held that, in view of the Supreme Court's decision in the case of The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd., the assessee was entitled to get deduction of the expenditure incurred in obtaining registration as revenue expenditure.

2. In regard to the alternative submission of the expenditure being eligible for being considered u/s 35D, the Tribunal came to the following conclusion :

". . . It may also be covered by Sub-clause (2)(c)(iv) of Section 35D which provides for expenditure in connection with issue for public subscription of shares of the company, in which case the expense, namely, the filing fees would be allowed to the assessee over a period of ten years."

On the two findings" mentioned above, the appeal of the Revenue for the assessment year 1976-77 was dismissed. An application for reference was thereafter filed by the Revenue u/s 256 of the Income Tax Act. Being of the opinion that there was a conflict of opinion among the various High Courts about the entitlement of the assessee to get deduction of the expenditure incurred in obtaining registration as revenue expenditure or capital expenditure, the Tribunal referred the questions mentioned in the beginning of this judgment for the opinion of the High Court.

3. Sri V. K. Singhal, learned counsel for the Revenue, submitted that the fees paid to the Registrar in connection with the amendment of the memorandum and articles of association to increase the capital is a capital expenditure and that the Tribunal erred in holding it to be a revenue expenditure. For the submission made, strong reliance was placed by learned counsel on a decision of a Division Bench of this court in CIT v. Aditya Mills [1990] 181 ITR 195. This decision has referred to and relied upon many other decisions of various-courts mentioned in it. Amongst others which were relied upon were Mohan Meakin Breweries Ltd. v. CIT(No. 2) [1979] 117 ITR 505 ; Bharat Carbon and Ribbon Manufacturing Co., Ltd. Vs. Commissioner of Income Tax, New Delhi, ; Bombay Burmah Trading Corporation Ltd. Vs. Commissioner of Income Tax, Bombay City-IV, ; Groz-Beckert Saboo Ltd. Vs. Commissioner of Income Tax, Commissioner of Income Tax, Central Vs. Modi Spinning and Weaving Mills Co. Ltd., and Commissioner of Income Tax Vs. Elphinstone Spinning and Weaving Mills Co. Ltd., .

4. Sri N. M. Ranka, learned counsel for the assessee, urged that several aspects

of the matter which were relevant and pertinent to the enquiry were not urged and placed before the court which decided the Aditya Mills" case [1990] 181 ITR 195 . Had those aspects been brought to its notice, the decision would have been different. The decision given in Aditya Mills [1990] 181 ITR 195 requires reconsideration. Strong reliance was placed by learned counsel for the assessee on Federal Bank Ltd. Vs. Commissioner of Income Tax, . The submission was that where registration fee is paid only to broaden the capital base for better conduct and efficiency and profitability of business, the amount spent is deductible as revenue expenditure u/s 37 of the Income Tax Act.

5. It is, no doubt, true that the distinction between "revenue" and "capital" expenditure is a fine one. Dealing with all those cases which took, the view that expenses incurred in obtaining registration of the memorandum of association and articles for enhancing capital, the Kerala High Court held that the fee paid under the Companies Act, 1956, to the Registrar was a revenue expenditure. To the same effect was the view taken by the Madras High Court in Commissioner of Income Tax Vs. Kisenchand Chellaram (India) P. Ltd., . In coming to the conclusion, the Madras High Court had applied the ratio enunciated by the Hon"ble Supreme Court in India Cements Ltd. Vs. Commissioner of Income Tax, Madras, . The decision of the Madras High Court was followed by the Karnataka High Court in Hindustan Machine Tools Ltd. Vs. Commissioner of Income Tax, Karnataka-II, . In its view as well, the expenditure incurred by way of remitting filing fee to the Registrar of Companies in respect of enhancement of the authorised share capital of the company was allowable as a revenue expenditure.

6. As already stated above, the Rajasthan High Court has taken a different view in the case of Aditya Mills [1990] 181 ITR 195.

7. Learned counsel for the assessee urged for making reference of the aforesaid question to a larger Bench. We do not, however, consider it necessary to do so. The Rajasthan High Court decision in the case of Aditya Mills [1990] 181 ITR 195 is clear and explicit on the point and we are bound by the same. We, consequently, answer the first question in the negative by saying that the fee paid to the Registrar of Companies for raising the authorised capital was not allowable as revenue expenditure,

8. Coming to the second question, arguments were addressed before us by the Revenue that Sub-section (2)(c)(iv) of Section 35D is not applicable to the present case. The said clause reads as under :

"35D(2)(c) where the assessee is a company, also expenditure--....

(iv) in connection with the issue, for public subscription, of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus ;"

Rebutting the submission of the Revenue, the assessee argued that the language of Section 35D is wide enough to cover a case of payment of fee to the Registrar

for raising capital of the assessee-company and the provision should be so interpreted that the same be not against the assessee, particularly when its object was to benefit him. Learned counsel contended that the settled principle is that a provision of law capable of two interpretations should be interpreted in a manner so as to give benefit to the assessee. Sub-section (2)(c)(iii) of Section 35D is as under :

"35D(2)(c)...

(iii) by way of fees for registering the company under the provisions of the Companies Act, 1956 (1 of 1956)."

The provision contained in Sub-section (2)(c)(iii) of Section 35D was resorted to by learned counsel for the assessee in the alternative in support of his submission that the expenditure incurred by way of enhancement of capital would be covered by the same.

9. To us, it appears that even if the provision of Sub-section (2)(c)(iii) of Section 35D is not applicable, the language of Sub-section (2)(c)(iv) of Section 35D is wide in nature and would include the deductibility of fee paid by the assessee to the Registrar for enhancement of capital. Therefore, the said provision was rightly applied to the present case by the Income Tax Appellate Tribunal.

10. Under these provisions, deduction of expenditure incurred for registration is to be spread over a period of ten years and is not allowable in the year in which the expenses are incurred. To uphold the submission of the Revenue that expenditure incurred for obtaining registration would not be allowable either under Sub-section (2)(c)(iii) or Sub-section (2)(c)(iv) of Section 35D would defeat the obvious intention of the Legislature and would produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result, we have to hold that under Sub-section (2)(c)(iv) of Section 35D, the expenditure incurred for obtaining registration would be liable to be deductible.

11. We, consequently, hold that the fee paid to the Registrar of Companies for raising authorised capital of the assessee-company was covered by Sub-section (2)(c)(iv) of Section 35D of the Income Tax Act,

12. Let the papers of this case be returned to the Income Tax Appellate Tribunal with the answers mentioned above. Since we have answered one question in favour of the Revenue and the other against it, we do not consider it to be in the interest of justice to award any costs.