(1988) 12 BOM CK 0045

In the Bombay High Court

Case No : IT Reference No. 378 of 1976

Commissioner of Income Tax APPELLANT

Vs

Otis Elevator Co. (I) Ltd. RESPONDENT

Date of Decision : 21-12-1988

Acts Referred:

Income Tax Act, 1961 — Section 40(a)(v)

Citation : (1990) 51 TAXMAN 443

Hon'ble Judges : T.D. Sugla, J;S.P. Bharucha, J

Bench : Division Bench

Advocate : V. Balasubramanian, S.V. Naik and K.C. Sidhva, for the Appellant; T. Pooran and Miss Shobha Chhabria, for the Respondent

Judgement

T.D. Sugla, J.—The two questions of law referred to this Court at the instance of the department are: 1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that house rent allowance paid to the employees docs not amount to perquisite for the purpose of computing the disallowance u/s 40(a) (v) of the income tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the expenditure incurred in transferring plant and machinery from Bhandup to Kandivli should be allowed as a revenue expenditure and further holding that the decision of the Supreme Court in the case of Sitalpur Sugar Works Ltd. Vs. Commissioner of Income Tax, Bihar and Orissa, is not applicable to the facts of the present case?

The counsel are agreed that in view of this Court''s judgment in Commissioner of Income Tax, Bombay City-III, Bombay Vs. Mercantile Bank Ltd., and Commissioner of Income Tax, Bombay City-II Vs. Indokem Private Ltd., , the first question requires to be answered in the affirmative and in favour of the assessee. The question is so answered.

2. As regards the 2nd question, Dr. Balasubramanian, the learned counsel for the

department pointed out that the expenditure of Rs. 8, 640 involved herein was incurred by the assessee for transferring its plant and machinery from Bhandup to Kandivli. The factory at Bhandup was on lease whereas the factory at Kandivli was a new factory building constructed by the assessee. The expenditure incurred in dismantling and shifting the plant and machinery from Bhandup to Kandivli, according to Dr. Balasubramanian, therefore, was of capital nature in view of the Supreme Court decision in Sitalpur Sugar Works Ltd. Vs. Commissioner of Income Tax, Bihar and Orissa, , Dr. Balasubramanian further stated that the following above decision, the Patna High Court in Commissioner of Income Tax Vs. Jamshedpur Engineering and Machine Manufacturing Co. Ltd., and the Madras High Court in India Pistons Repco Ltd. v. C/V [1983] 143 ITR 424 had taken the same view. Shri Pooran, the learned counsel for the assessee, on the other hand, stated that there was no finding given by the Tribunal as to whether the shifting of the plant and machinery in the case of the assessee was an advantage of enduring nature. In the absence of such a finding, he contended that the decisions relied upon by Dr. Balasubramanian would not apply. It was urged that the Supreme Court decision in Commissioner of Income Tax, Bombay City-I, Bombay Vs. Associated Cement Companies Ltd., Bombay, and the Calcutta High Court decision in Commissioner of Income Tax Vs. Karanpura Development Co. Ltd., were more akin to the facts of this case and, therefore, the Tribunal was right in allowing the expenditure as the revenue expenditure. In our opinion, the issue involved herein is squarely covered by the Supreme Court decision in Sitalpur Sugar Works Ltd.''s case (supra). As in the Supreme Court case in the instant case also the expenditure was incurred in dismantling and shifting the plant and machinery. The factory at Bhandup was on leasehold premises whereas the factory to which the plant and machinery has been shifted is a factory building constructed by the assessee itself. Evidently the assessee has shifted its plant and machinery to the premises of its own and this certainly is an advantage of enduring nature. It is an admitted position that for the purpose of deciding whether an expenditure is of capital or revenue nature, there are no hard and fast rules and the case requires to be decided on the facts of each case. Having due regard to the above stated facts in this case we hold that the expenditure is of capital nature and the Tribunal was not right in allowing the same as revenue expenditure. Accordingly, the second question is answered in the negative and in favour of the revenue. No order as lo costs.

Reference answered accordingly.