(1988) 09 CAL CK 0020

In the Calcutta High Court

Case No : IT Reference No. 52 of 1979

Commissioner of Income Tax APPELLANT

Vs

Prakash Ch. (P.) Ltd. RESPONDENT

Date of Decision : 12-09-1988

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (1990) 48 TAXMAN 190

Hon'ble Judges : K.M. Yusuf, J;Ajit K. Sengupta, J

Bench : Division Bench

Advocate : R.N. Saha, for the Appellant;Sunil Mukherjee, for the Respondent

Judgement

Sengupta, J.—In this reference u/s 256(1) of the income tax Act, 1961 (''the Act'') for the assessment year 1963-64 the following question of law has been referred to this Court:

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in holding that the expenditure of Rs.24,846 incurred for the purchase of pumps, electric cables, C.D. sheets, etc., did not represent an expenditure of a capital nature but that it represented an expenditure of a revenue nature?"

The facts shortly stated are that the assessee, an unregistered firm, carrying on contract business, had claimed deduction for Rs. 24,846. The ITO held the said expenses to be of capital nature being purchase of pumps, electric cables, C.D. sheets, etc. The AAC also confirmed the disallowance.

2. When the matter came before the Tribunal it was explained that the expenses of Rs. 24,846 were incurred by the assessee for the purchase of pumps, electric cables, C.D sheets, etc., which were consumable stores whose life was quite short and they had to be replaced from time to time and there was nothing to indicate that they brought any capital asset in existence. The Tribunal agreed with the contention of the assessee and held that the expenses of Rs. 24,846 were of revenue nature.

3. According to the ITO, the assessee has acquired assets like pumps, electric cables, etc., by incurring such expenses. The ITO in his order did not give any reason at all. He has merely stated as follows:

"Expenses of capital nature, the assessee has debited certain expenses made on pumps, electric cables, C.D. sheets, etc., to contract account. These are of capital nature. Therefore they are disallowed."

4. Similarly, the AAC also did not look into the nature of the expenditure incurred by the assessee and observed as follows:

"I also feel that the ITO has correctly disallowed a sum of Rs. 24,846 as expenses of capital nature. The ITO has pointed out items of expenditure which are of capital nature as the appellant-firm has acquired assets like pumps, electric cables etc. by incurring such expenses. The disallowance of Rs. 24,846 is confirmed."

5. It appears that the assessee has submitted the details of the expenses of Rs. 24,846. These expenses were made for boring tubewells and installing hand pumps for raising water and supplying water for construction works. There was no electric pump for use. The boring expenses are of revenue nature. Similarly, C.D. sheets were used for making platform to receive wet concrete mixture coming out of the mixing machines. The C.D. sheets were used as consumable stores in the process of construction and as such were of revenue nature. Electric cables were also used for lighting the area under construction, wirings made were of temporary nature and had to be shifted from one area to the other with the gradual advancement of works. The cables, by constant use and movement, become worn out frequently and the salvage value after the completion of the works becomes nil. The Tribunal found that the expenditure related to consumable stores whose life was quite short and they had to be replaced from time to time and there is nothing to indicate that they brought any capital asset in existence.

6. Having regard to the purpose for which the expenditure had been incurred by the assessee and having regard to the fact that the expenditure related to consumable stores in our view, the Tribunal came to a correct conclusion.

7. For the reasons aforesaid, we answer this question in this reference in the affirmative and in favour of the assessee.

8. Before we part with the case we have to observe that none of the relevant documents have been included in the payee bank. The manner in which the paper book is being filed by (he Commissioner is not at all satisfactory (Commissioner?), West Bengal-II shall enquire why the paper book contains the documents which are not relevant to the case. The Commissioner, West Bengal-II shall pay costs of this reference assessed at 60 Gms.

9. Mr. Saha, the learned counsel appearing for the assessee has, however, submitted that such cost may be paid to any welfare organisation. In that view of

the matter, the Commissioner, West Bengal-II is directed to pay the said sum of 60 Gms. to the Cancer Centre and Welfare Home, Thakurpukur, within a week from date and the receipt shall be produced before this Court within two weeks from date.

10. Leave is given to file paper book within a week from date. All parties shall act on a signed copy of the operative part of this judgment and order.