
(1994) 03 BOM CK 0035
In the Bombay High Court
Case No : IT Ref. No. 252 of 1982

Commissioner of Income Tax	Vs	APPELLANT
Rajaram Bandekar		RESPONDENT

Date of Decision : 08-03-1994

Acts Referred:

Income Tax Act, 1961 — Section 32, 33A, 37(1)

Citation : (1994) 208 ITR 503

Hon'ble Judges : Sujata V. Manohar, C.J.; B.P. Saraf, J

Bench : Division Bench

Advocate : G.S. Jetley and P.S. Jetley, for the Appellant; G. Krishnan, for the Respondent

Judgement

Mrs. Sujata Manohar, C.J.—The following questions are referred to us under s. 256(1) of the IT Act, 1961 :

"1. Whether, on the facts and in the circumstances of the case, interest/discounting charges of Rs. 2,59,956 in respect of machinery purchased under deferred payment scheme was rightly capitalised for allowance of depreciation and development rebate ?

2. Whether, on the facts and circumstances of the case, payment of Rs. 3 lakhs was a permissible deduction for the asst. yr. 1974-75 ?"

2. As far as the first question is concerned, which is at the instance of the Department, in view of the decision of this Court in Commissioner of Income Tax Vs. Rajaram Bandekar, , the question will have to be answered in the negative and in favour of the Revenue. The first question is answered accordingly.

3. The second question is referred to us at the instance of the assessee. In this connection, the relevant facts are as follows :

(a) The assessee is a partnership firm which came into existence under a deed of partnership dt. 1st July, 1963. The partnership was formed with the sole object

of working the mines at Sirigao. The mining concession being Mining Concession No. 4 of 1949 was in the possession of Shri Laxman Rajaram Bandekar who was one of the partners of the assessee-firm. Prior to the said partnership coming into existence, the mining concession was worked by Rajaram Bandekar in partnership with his brother, Narayan Rajaram Bandekar, and two outsiders. This partnership was dissolved in 1950. Thereafter, Rajaram had given the mining concession on lease to his brother, Vinayak, which lease continued up to 1962. It was renewed for a further period of three years.

(b) In 1963, Rajaram instituted a suit for taking back possession of the lease before the expiry of the period for reasons set out therein. In 1965, the Supreme Court ordered Vinayak to vacate the mine and give back its possession to Rajaram.

(c) In 1963, Vinayak had also filed a suit being Suit No. 3220 of 1963 in the Court of the Civil Judge, Margao, claiming one-half share in the said mining concession. In July, 1970, there was a settlement between Vinayak and Rajaram in the suit. One of the terms of the settlement was that Rajaram would supply to Vinayak certain specific quantities of iron ore every year at rates which were specified for a period of six years. Before entering into this settlement, Rajaram entered into an agreement dt. 15th July, 1970, with the assessee-firm, under which the assessee-firm agreed to fulfil the terms of settlement that Rajaram was about to enter into with Vinayak. Under the said agreement dt. 15th July, 1970, the assessee-firm agreed to abide by and fulfil the commitment of supplying 7,50,000 DM tonnes of iron ore to Vinayak during the period of six years from 1st Oct., 1970 to 30th Sept., 1976, at a price specified in the said settlement, a draft of which was shown to the assessee-firm. The assessee-firm also agreed to make itself liable for all obligations, liabilities, responsibilities, etc., that may arise for non-fulfilment, breach or violation or short-delivery of iron ore under the said settlement. Two days thereafter, on 17th July, 1970, a settlement was accordingly signed by Rajaram and Vinayak in which specific details of the supply of iron ore to Vinayak and the prices at which the same were to be supplied are set out. It seems that thereafter disputes arose between the parties relating to the said supplies, after the expiry of three years. On the intervention of one Dr. Hede, it was agreed between the parties that on payment of Rs. 3,00,000 to Vinayak, the said contract for supply of iron ore as set out in the said settlement would come to an end. Accordingly, Dr. Hede addressed a letter dt. 24th June, 1973, to the assessee-firm in which he set out that he had made a commitment on behalf of the assessee-firm to pay Rs. 3,00,000 to Vinayak to bring to an end to the contract dt. 17th July, 1970, for supply of iron ore to him. He has also informed the assessee-firm that for the sake of good order, the assessee-firm should instruct its advocates to draft the necessary agreement "to record formally" the settlement effected through him. It is pursuant to this commitment made by Dr. Hede that the assessee-firm paid a sum of Rs. 3,00,000 to Vinayak for bringing to an end the arrangement for supply of iron ore to him as set out earlier.

(d) The assessee-firm claimed deduction in respect of the sum of Rs. 3,00,000 in the asst. yrs. 1974-75 and 1975-76. The ITO rejected this claim for deduction for both the assessment years. The assessee-firm carried the matter to the CIT(A) who accepted the assessee's claim in the asst. yr. 1974-75. He upheld the ITO's disallowance of this amount in the asst. yr. 1975-76. The Revenue carried an appeal to the Tribunal in respect of both the asst. yrs. 1974-75 and 1975-76. The Tribunal has disallowed the deduction in both the assessment years. The assessee-firm has, therefore, come by way of reference for the asst. yr. 1974-75.

4. The Supreme Court in the case of Commissioner of Income Tax, Delhi Vs. Delhi Safe Deposit Company Limited, has considered when expenditure can be considered as laid out on purely business considerations and wholly for the purpose of the assessee's business. The Supreme Court has observed that the true test of an expenditure laid out wholly and exclusively for the purposes of trade or business is that it is incurred by the assessee as incidental to his trade for the purpose of keeping the trade going and of making it pay and not in any other capacity than that of a trader. The Supreme Court has observed that the question should be decided on ordinary principles of commercial trading and commercial expediency. The mere fact that, to some extent, the expenditure may enure to a third-party's benefit cannot, in law, defeat the effect of the finding as to the purpose of the expenditure. Such expenditure can have a wide ranging purpose. It may cover not only the day-to-day running of a business but also the rationalisation of its administration and modernisation of its machinery. It may include measures for the preservation of the business and for the protection of its assets and property from expropriation, coercive process or assertion of hostile title. It may also comprehend payment of statutory dues and taxes imposed as a pre-condition to commence or for carrying on of a business. Looked at in this light, it is clear that the sum of Rs. 3,00,000 has been paid by the assessee-firm to Vinayak in order that it may get rid of its obligation to supply iron ore at certain specified prices for a period of six years to Vinayak. In fact, since the benefit of the mining concession has been enjoyed by the assessee-firm, the cessation of the hostile claim by Vinayak to this concession was also a matter in which the assessee had been directly interested. Therefore, although the original settlement of 17th July, 1970, was between Vinayak and Rajaram, it directly affected the business of the assessee-firm. It was on this count that the assessee-firm had agreed to the said settlement and had agreed to supply iron ore to Vinayak by its agreement dt. 15th July, 1970, with Rajaram. Similarly, the assessee-firm paid Rs. 3,00,000 to Vinayak to terminate its obligation to supply iron ore to Vinayak at specified prices under the settlement dt. 17th July, 1970, read with the agreement of the assessee-firm with Rajaram dt. 15th July, 1970. The Tribunal, therefore, was not right when it held that the arrangement of payment of Rs. 3,00,000 was only between Rajaram and Vinayak and that the assessee-firm had no connection with it. The assessee-firm's business was directly affected by the arrangement and, in fact, the letter of Dr. Hede which is addressed to the assessee-firm makes it quite clear that it was at

the instance of the assessee-firm that he had made a commitment for payment of Rs. 3,00,000 to Vinayak for getting rid of the inconvenient contractual obligations. In these circumstances, the payment of Rs. 3,00,000 by the assessee-firm is expenditure wholly incurred for the purposes of business of the assessee-firm and it is revenue expenditure.

5. The CIT(A) allowed this expenditure for the asst. yr. 1974-75 in view of the commitment made on behalf of the assessee-firm by Dr. Hede by his letter dt. 24th June, 1973. The relevant accounting year for the asst. yr. 1974-75 ended on 30th June, 1973. Since the liability of the assessee-firm to pay Rs. 3,00,000 arose prior to the end of the accounting year 1973, this expenditure was rightly allowed by the CIT(A) for the asst. yr. 1974-75. Hence, the question which is referred to us is answered in the affirmative and in favour of the assessee.

6. No order as to costs.