

(2000) 11 DEL CK 0095

In the Delhi High Court

Case No : Income Tax R. No. 161 of 1980

Commissioner of Income Tax

APPELLANT

Vs

Sharpedge Ltd.

RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2), 37

Citation : (2001) 1 AD 701 : (2001) 165 CTR 326 : (2001) 89 DLT 125 : (2001) 249 ITR 319 : (2001) 114 TAXMAN 525

Hon'ble Judges : Dr. Arijit Pasayat, C.J.; D.K. Jain, J

Bench : Division Bench

Advocate : Ajay Jha, for the Appellant; Sajan Narain, for the Respondent

Judgement

Arijit Pasayat, C.J.—Pursuant to the direction given by this court, the following question has been referred for the opinion of this court u/s 256(2) of the Income Tax Act, 1961 (in short, the "Act"), by the Income Tax Appellate Tribunal, Delhi Bench "A", New Delhi (in short, the "Tribunal") :

"Whether, on the facts and in the circumstances of the case, the interest of Rs. 73,449 paid by the assessed can be said to be the capital expenditure not deductible in the computation of the assessed's business ?" The factual position, as indicated in the statement of case, is as follows : The assessed is a public limited company, which was at the relevant point of time, that is, for the assessment year 1971-72 carrying on the business of manufacture and sale of razor blades. The Directorate of Industries had allotted a factory shed No. 34 in OKhla Industrial Estate to the assessed in March, 1957, on rental basis. In 1970, the assessed acquired another factory shed No. 36 in the same industrial estate. Thereafter, the Directorate of Industries offered both sheds to the company on hire purchase basis for 15 years commencing from September 1, 1962. The assessed was also given an option under the scheme to buy the sheds on an outright purchase basis. The assessed exercised its option to have outright purchase and got a rebate of Rs. 18,506 on the hire-purchase price, on payment

of interest for the unexpired portion of the period of 15 years fixed under the scheme. The assessed-company was required to pay Rs. 1,77,607 inclusive of interest of Rs. 36,725 on the Installments of hire-purchase scheme relating to the period from September 1, 1962, to July 31, 1969. The total amount of interest paid by the assessed was Rs. 73,449 for both the sheds. The assessed claimed deduction in respect of the same. The Income Tax Officer disallowed the claim but no reason was indicated for such disallowance. The assessed preferred an appeal before the Appellate Assistant Commissioner (in short, "the AAC"). The said authority asked the Income Tax Officer to indicate reasons on the basis of which the disallowance was made. The Income Tax Officer indicated its reasons vide letter dated July 1, 1974. The assessed took the stand that the disallowance was unjustified and under the hire-purchase scheme, the allottees were given an option to buy sheds on outright purchase basis. The assessed-company opted to buy the sheds and got a rebate. But it was required to pay interest on the unexpired period of hire-purchase from September 1, 1969, to July 31, 1977. It had paid interest on the amount fixed for sale on the Installments under the hire-purchase scheme for the previous period, that is, September 1, 1962, to July 31, 1969. The amount, thus, paid in respect of the unexpired interest of both the sheds was debitable to the profit and loss account and was allowable as a deduction. Reliance was placed on the decisions of the apex court in BOMBAY STEAM NAVIGATION CO. (1953) PRIVATE LTD. Vs. COMMISSIONER OF Income Tax, BOMBAY, and State of Madras Vs. G.J. Coelho, . The Appellate Assistant Commissioner accepted the stand of the assessed and held that the amount of Rs. 73,449 was allowable as business expenditure. The matter was carried before the Tribunal by the Revenue. The Tribunal upheld the Appellate Assistant Commissioner's conclusions, inter alia, held as follows : "It was only after the allottees exercised the option and got the sheds on outright purchase basis as business assets that they were required to pay interest. The shifting of the basis to outright purchase was evidently necessary to carry on the business of the assessed more effectively."

2. The application filed by the Revenue u/s 256(1) of the Act was rejected and thereafter, being moved u/s 256(2) of the Act, this court directed reference of the question, as set out above.

3. We have heard learned counsel for the Revenue and learned counsel for the assessed. The stand of the Revenue is that though the Tribunal has recorded a finding that the shifting of the basis to outright purchase was necessary to carry on the business more effectively, it did not indicate as to how that per se made the expenditure a revenue one, since what was ultimately acquired was an asset and the interest was clearly relatable to it. Learned counsel for the assessed, on the other hand, referred to State of Madras Vs. G.J. Coelho, to contend that the Tribunal's conclusions were in order. Though the assets, first of all, were offered on hire-purchase basis, later on, the assessed exercised its option to have outright purchase and additional rebate was offered to the assessed for effecting the purchase on outright basis. That being the position, according to him, the

Tribunal's decision is irreversible.

4. The question whether an expenditure is "capital" or "revenue" in nature has come up before the courts on various occasions and the distinction has often been said to be very thin. It is not easy ordinarily to evolve a test for ascertaining whether in a given case expenditure is capital or revenue. It would depend upon the factual scenario for determination of the question. To consider whether expenditure is revenue expenditure what is required to be considered is the nature and the objects for which the expenditure is incurred in the ordinary course of business. The question whether a particular expenditure is revenue expenditure incurred for the purpose of the business has to be viewed in the larger context of business necessity and expediency. If the outgoing or expenditure is so related to the carrying on or conduct of the business, it has to be regarded as an integral part of the profit-earning process and not for acquisition of an asset or a right of a permanent character, the possession of which is a condition of carrying on the business and has to be accordingly treated. Where the expenditure is intrinsically linked with acquisition of an asset or an interest or right of permanent character, it has to be treated as capital in nature. The decision in *State of Madras Vs. G.J. Coelho*, does not assist the assessee in any way. In this case it was held that the expenditure made under a transaction which is so closely related to the business that it could be viewed as an integral part of the conduct of the business may be regarded as revenue expenditure.

5. Though the Tribunal has held that the shifting of the business to outright purchase was necessary for carrying on the business of the assessee more effectively, that per se did not make the expenditure revenue expenditure. Similarly, grant of rebate is also not determinative of the character of the expenditure. The interest paid was in respect of the asset, which was acquired on an outright basis that was intimately linked with the value of the asset. That determines the character of the expenditure and it was capital in nature ; the Tribunal was not justified in holding, otherwise. Our answer to the question referred Therefore, is in the negative, in favor of the Revenue and against the assessee.

6. This reference is disposed of.