(1998) 08 KL CK 0030

In the High Court Of Kerala

Case No : Income-tax Reference No. 131 of 1996

Commissioner of Income Tax APPELLANT

Vs

Steel Complex Ltd. RESPONDENT

Date of Decision : 04-08-1998

Acts Referred:

Citation : (1998) 150 CTR 677 : (1999) 238 ITR 1054 : (2000) 110 TAXMAN 25

Hon'ble Judges : Om Prakash, C.J;J.B. Koshy, J

Bench : Division Bench

Advocate : P.K.R. Menon and N.R.K. Nair, for the Appellant; P. Balachandran, for the Respondent

Judgement

Om Prakash, C.J.—Heard counsel for the applicant.

2. At the instance of the Revenue, the Income Tax Appellate Tribunal referred the following question relating to the assessment year 1986-87 for the opinion of this court :

"Whether, on the facts and in the circumstances of the case, the expenditure incurred for water treatment plant and fume extraction plant is capital in nature ?"

3. The facts, in brief, are that the assessee--a limited company--is engaged in the manufacture of steel. For the year relating to the assessment year 1986-87, the assessee claimed the expenditure incurred on installation of water treatment plant and fume extraction plant as revenue expenditure. The Assessing Officer disallowed the claim holding that the expenditure was capital expenditure. On appeal, the first appellate authority affirmed the order of the Assessing Officer.

4. On further appeal, the Appellate Tribunal held as follows :

"The assessee installed two plants. They are for the purpose of improvement in the operation of the existing systems with greater efficiency and profitability. Originally the municipality was supplying water to the assessee for running the factory. Since it was found that the municipality was not supplying sufficient quantity of water the assessee dug wells. But the well water was also found to be salty. Hence they installed the water treatment plant for getting pure water with an intention to improve the functioning of the factory. This did not in any way enhance the production of steel... The fume extraction plant also did not lead to any increase in the volume of production. It was installed to ward off health hazards and in compliance with statutory requirement."

5. Finding so, the Appellate Tribunal held that the expenditure was revenue in nature.

6. The question posed herein will not detain us for long, inasmuch as sufficient guideline is given by the Supreme Court in Alembic Chemical Works Co. Ltd. v. CIT : [1989]177ITR377(SC) . The Supreme Court while laying down certain principles to find out which expenditure is capital or revenue in nature, inter alia, observed as under (page 386) :

"What is capital expenditure and what is revenue are not eternal verities but must need be flexible so as to respond to the changing economic realities of business. The expression ''asset or advantage of an enduring nature'' was evolved to emphasise the element of a sufficient degree of durability appropriate to the context........

There is also no single definitive criterion which, by itself, is determinative as to whether a particular outlay is capital or revenue. The ''once for all'' payment test is also inconclusive. What is relevant is the purpose of the outlay and its intended object and effect, considered in a common sense way having regard to the business realities. In a given case, the test of ''enduring benefit'' might break down."

7. In Alembic Chemical Works Co. Ltd.''s case : [1989]177ITR377(SC) , the appellant entered into an agreement with Meiji--a foreign concern-engaged in the manufacture of antibiotics, which under the agreement agreed to supply to the appellant the "subcultures of Meiji''s most suitable penicillin producing strains" in a pilot plant, the technical information, know-how and written description of Meiji''s process for fermentation of penicillin along with a flow-sheet of the process in the pilot plant, and the design and specifications of the main equipment in such pilot plant and to arrange for the training of the appellant''s representatives in Meiji''s plant in Japan at the appellant''s expense. Then the question arose whether the payment made under the agreement was capital or revenue in nature. The Supreme Court observed as under (headnote) :

"Even after the agreement, the product continued to be penicillin and the agreement with Meiji stipulated the supply of the ''most suitable subcultures'' evolved by Meiji for purposes of augmentation of the yield of penicillin...... The mere improvement in or updating of the fermentation-process would not necessarily be inconsistent with the relevance and continuing utility of the existing infrastructure, machinery and plant of the appellant .....

That the improvisation in the process and technology in some areas of the enterprise was supplemental to the existing business and there was no material to hold that it amounted to a new or fresh venture. . . . The financial outlay under the agreement was for the better conduct and improvement of the existing business and was revenue in nature and was allowable as a deduction in computing the business profits of the appellant."

8. Applying the above stated principles and the aforesaid observations made by the Supreme Court, we are in complete agreement with the view, taken by the Appellate Tribunal that the expenditure incurred for the water treatment plant and fume extraction plant, was revenue expenditure and hence allowable deduction.

9. In the result, we answer the abovementioned question in the negative, that is, in favour of the assessee and against the Revenue.