
(1971) 08 KL CK 0037

In the High Court Of Kerala

Case No : Income-tax Reference No. 25 of 1969

Commissioner of Income Tax

APPELLANT

Vs

T.C.C. Ltd.

RESPONDENT

Date of Decision : 20-08-1971

Acts Referred:

Income Tax Act, 1961 — Section 37(1)

Citation : (1973) 87 ITR 66

Hon'ble Judges : T.S. Krishnamoorthy Iyer, J; K.K. Mathew, J

Bench : Division Bench

Advocate : P.K. Krishnankutty Menon, for the Appellant; P.K. Kurian, for the Respondent

Judgement

Mathew, J.—This is a reference u/s 256(1) of the Income Tax Act, 1961, at the instance of the revenue. The question of law referred is :

" Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was legally justified in allowing the expenditure of Rs. 26,100 being the respondent's contribution to Government for constructing a road as a permissible deduction u/s 37(1) of the Income Tax Act, 1961?"

2. The assessment year in question is 1964-65, the accounting period being the financial year ended March 31, 1964. The assessee is a public limited company engaged in the manufacture of chemicals. The assessee along with three other public undertakings, namely, the Fertilisers and Chemicals Travancore Ltd., the Indian Rare Earths Ltd. and the Hindustan Insecticides Ltd., approached the Government of Kerala for laying a new road from Kalamasseri to Udyogamandal where the assessee's factory is situated. The assessee was supplying a portion of its products to Hindustan Insecticides Ltd., and the assessee was receiving and dispatching materials required for and produced in its factory through lorries. The area in which the assessee-company was situate was not at the material time served by pucca roads. It was because of that that the assessee and the other companies approached the Government for the construction of the road. The

Government of Kerala and the companies agreed after discussion that the Government will bear the cost of the acquisition of land and 25% of the cost of construction of the road; and that the, four companies will share 75% of the cost of construction. The total cost to be shared by the four companies was Rs. 1,04,550; and the assessee's share came to Rs. 26,100. This amount was made over to the Government which was in charge of the acquisition proceedings, and also the construction of the road.

3. The assessee claimed to deduct this amount from his total income as revenue expenditure for the year in question, but the Income Tax Officer disallowed the claim holding that the assessee's contribution was capital expenditure. The assessee appealed to the Appellate Assistant Commissioner, and contended that no capital asset of an enduring advantage was acquired by this expenditure of Rs. 26,100 and that by this expenditure only considerable saving in the cost of transport was effected. The Appellate Assistant Commissioner held that the company derived a benefit which was not of a temporary nature, and the Income Tax Officer was, therefore, right in disallowing the claim for deduction. The assessee then filed an appeal before the Appellate Tribunal and contended on the basis of COMMISSIONER OF Income Tax, WEST BENGAL Vs. HINDUSTHAN MOTORS LTD., that the claim was an allowable deduction in that it was commercially expedient for the assessee to incur the same for several reasons. The Tribunal held that the assessee was entitled to deduct the amount contributed for the construction of the road as revenue expenditure.

4. In BOMBAY STEAM NAVIGATION CO. (1953) PRIVATE LTD. Vs. COMMISSIONER OF Income Tax, BOMBAY., the Supreme Court observed that the question whether a particular expenditure is revenue expenditure incurred for the purpose of business must be determined On a consideration of all the facts and circumstances, and by the application of the principles of commercial trading, and that the question must be viewed in the larger context of business necessity of expediency. In Assam Bengal Cement Co. Ltd. Vs. The Commissioner of Income Tax, West Bengal, "We court said that When an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, there is very good reason (in "the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital. If by the expenditure the assessee acquired an advantage of an enduring "character to its business the expenditure would be capital expenditure. In Regent Oil Co. Ltd, v. Strick (Inspector of Taxes), [1966] A.C. 295, [1969] 73 ITR 301 (H.L.) Lord Reid rejected the contention that the word " enduring " had come to be interpreted so as to include, any benefit" which lasted for more than one year. He was of opinion that, as the quality of the asset is different in different cases, all relevant factors must be considered in each particular case to determine the nature of (sic) Enduring benefit." In Ganesh Sugar Mills Ltd. Vs. Commissioner of Income Tax, West Bengal, III, the assessee claimed a deduction of a sum of Rs. 19,220, being the amount contributed by the assessee to a co-

operative society for the; purpose of development of the roads giving access to the factories of the assessee as well as other sugar mills of the locality. The roads were constructed by the co-operative society partly on land owned by the assessee, but were meant for common use by the cane growers as well as for transport purposes of the factory owners. The question was whether the assessee can claim deduction of the amount u/s 10(2)(vi) of the Act of 1922. The court held that the amount was capital expenditure. The court distinguished its earlier decision in Commissioner of Income Tax v. Hindusthan Motors Ltd., In that case the assessee, which was" manufacturing motors cars, had its factory near Uttarpara. There was an approach, road connecting the factory to a main trunk road. On account of lack, of repairs for a long period the condition of the road had deteriorated and caused transportation difficulties to the assessee. The Government was not prepared to meet the expenses of the repairs of the road unless the assessee had contributed towards the cost of such repairs. The assessee paid a certain amount being the amount of such repairs to the Government, as a consequence of which the road was repaired. The assessee claimed a deduction of the amount u/s 10(2)(xv). The court said that the money was spent not so much to bring about an, asset Or advantage of enduring benefit to the company but to run the business efficiently and conveniently, and therefore, it was not a capital expenditure. The distinction between the two cases lay in the fact that in the one case an enduring, advantage was obtained by the opening up of the new road, whereas no enduring advantage resulted from the repair of the road, in the other case. In Dewan Sugar and General Mills Pvt. Ltd. Vs. Commissioner of Income Tax, the Allahabad High Court held that the amount contributed by the assessee there to the State Government for" construction of new roads for improving transport facilities, and not for repair of existing roads, was capital expenditure. The court also said that even though the land on which the roads were constructed did not belong to the assessee, the contributions made by the assessee brought into existence an advantage of an enduring nature. The learned judges distinguished the decision of the Calcutta High Court in Commissioner of Income Tax v. Hindusthan Motors Ltd., by saying that the amount there was spent for repair of an approach road which was different from the case where a new road is laid out for the purpose of the business of the assessee. In Lakshmi Sugar and Oil Mills Ltd. Vs. Commissioner of Income Tax, it was held that a payment made to Government in pursuance of a scheme for development of roads in cane-growing rural areas, and for improving transport facilities, brought into existence an advantage of an enduring nature, and was, therefore, capital expenditure. In H.R. Sugar Factory (P.) Ltd. Vs. Commissioner of Income Tax, it was held that a payment of Rs. 25,000, made by the assessee to the Government towards road development fund, for the conversion of kachcha roads into pucca roads, was capital expenditure as the pucca roads brought into existence an advantage of enduring nature. In Lakshmi Sugar Mills Co. Ltd. v. Commissioner of Income Tax [1967] 66 I.T.R 21 the Delhi High Court held that amounts spent for construction of a road is a capital expenditure and cannot be deducted u/s 10(2)(xv).

5. We think that in this case, the assessee obtained an advantage of an enduring nature by the construction of the road, and that the amount contributed was a capital expenditure. The fact that the assessee along with the other companies advanced a major portion of the amount for the Government to acquire the land and construct the road would not affect the nature of the payment. That the road, when constructed, was dedicated to the public would not mean that the assessee did not obtain an enduring advantage by the construction of the road.

6. We answer the question in the negative and against the assessee. We make no order as to costs.

7. A copy of this judgment will be sent to the Appellate Tribunal under the seal of the High Court and the signature of the Registrar.