
(1981) 10 MAD CK 0056

In the Madras High Court

Case No : Tax Case No's. 1438 to 1448 of 1977

Commissioner of Income Tax

APPELLANT

Vs

Wheels India Ltd.

RESPONDENT

Date of Decision : 13-10-1981

Acts Referred:

Income Tax Act, 1961 — Section 256(1)

Citation : (1983) 141 ITR 748

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Judgement

1. The Appellate Tribunal has referred the following question under s. 256(1) of the I.T. Act.

Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the entire payments made to M/s. Dunlop Rim and Wheel Ltd. under the collaboration agreement constituted revenue expenditure and allowable accordingly?

The assessee-company carries on business in the manufacture of wheels for trucks, tanks and tractors. The reference relates to assessment years 1963-64 to 1970-71. In each of these years, the assessee claimed payments made to its collaborators, M/s. Dunlop Rim and Wheel Ltd., U.K. The ITO disallowed a portion of the payment for the reasons mentioned by him in the order for the assessment year 1963-64. The assessee appealed to the AAC who, by a consolidated order for all these years, upheld the assessee's claim. In his view, the technical aid fees paid by the assessee to the foreign company was for the user of the technical knowledge and information and the assessee had not acquired a proprietary right in the secret knowledge or process; nor had the assessee acquired any asset of any enduring nature. The Department appealed to the Tribunal which confirmed the order of the AAC. The Commissioner has taken the matter on reference on the question already extracted.

2. The learned counsel for the Commissioner contended that the expenditure had been incurred for commencing a business and that, in any event, part of the expenditure should have been attributed to capital account.

3. The Tribunal, after referring to the terms of the agreement, which is unfortunately not annexed to the statement of the case, and after referring to the relevant decisions, observed in paragraph 17 of its order:

On applying the tests set out in the foregoing decisions, the payments made by the assessee-company to Dunlop, which were admittedly made under clause 5(i) of the agreement, were of a revenue nature. They did not relate to the sale and transfer of any right or asset, but merely related to the use of the scientific data and information, which was, as declared in the agreement, absolutely necessary for manufacturing the equipments in question. The services, which were rendered by Dunlop, for which the disputed payments were made related to the proper and efficient operation of the machinery and the production of the required articles. It did not result in the acquisition of any asset or advantage or benefit of an enduring nature. The services obviously related to the day-to-day running of the factory and the manufacturing of the machinery. We accordingly hold that all the payments were of a revenue nature and were permissible deductions.

4. The learned counsel for the Commissioner took identical contentions as in T. C. Nos. 539 to 546 of 1977 Commissioner of Income Tax, Tamil Nadu-III Vs. Sundaram Clayton Ltd.,), which were disposed of before these cases were taken up. As the contentions are identical with those considered therein, it is not necessary for us to enter into the same discussion here. We consider that the nature of the agreement, as summarised by the income tax authorities and by the Tribunal, appears to us to show that the agreement was merely for the purpose of running the business and not for acquiring any asset of an enduring nature. The contention for the Commissioner was that the Tribunal appeared to proceed on a misapprehension that unless there was a transfer of any right or asset to the Indian company from the foreign company, the amount would always have to be taken as revenue expenditure. The proposition found in the order of the Tribunal, is somewhat wide. What is obviously meant is that the assessee had not paid any consideration for the acquisition of any asset or any benefit of an enduring nature. Understood in that light, we do not find that there is any error committed by the Tribunal in holding that the expenditure was of a revenue nature. The result is that the question referred to us is answered in the affirmative and in favour of the assessee. There will be no order as to costs.