(2012) 06 BOM CK 0011

In the Bombay High Court

Case No : IT Ref. No. 67 of 1989

Larsen and Toubro Ltd. APPELLANT

Vs

CIT RESPONDENT

Date of Decision : 15-06-2012

Acts Referred:
Income Tax Act, 1961 — Section 256(1)

Citation : (2012) 06 BOM CK 0011

Hon'ble Judges : S.J. Vazifdar, J;M.S. Sanklecha, J

Bench : Division Bench

Advocate : J.D. Mistry with B.D. Damodar, for the Appellant; Vimal Gupta, for the Respondent

Judgement

1. This is a reference u/s 256(1) of the IT Act, 1961 at the instance of the applicant for the assessment year 1979-80. The following question has been referred by the Tribunal arising out of its order dated 17-2-1988 for the opinion of this Court:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the professional fees aggregating to Rs. 3,44,630 paid to the consultants in relation to the applicants cement project was in the nature of capital expenditure?

2. The brief facts relating to the case are that during the assessment year 1979-80 the applicant incurred expenses on professional fees of Rs. 3,44,630 in relation to its cement project at Chandrapur. The applicant claimed the above expenses as a revenue expenditure on the ground that the cement project is not a new business but an extension of its existing business. The applicant was during the assessment year 1979-80 inter alia engaged in the business of manufacturing cement manufacturing machinery. Subsequently the applicant proposed setting up plant for manufacturing cement and for that purpose had incurred the aforesaid expenditure in relation to professional fees. The applicant claimed that the aforesaid expenditure of payment to consultants ought to be

allowed as a revenue expenditure as the same was not in respect of a new business but an extension of an existing business and there was complete inter-connection, inter-lacing and inter-dependence between the existing business and the cement manufacturing project. The ITO rejected the claim of the applicant holding that the expenditure is of a capital nature. The Commissioner (Appeals) and the Tribunal upheld the order of the ITO.

3. The advocates for the applicant as well as the respondent are agreed that issue in the present application is covered against the applicant by the decisions of this Court in the matter of Commissioner of Income Tax Vs. J.K. Chemicals Ltd., and Trade Wings Ltd Vs. Commissioner of Income Tax, . In the above cases it has been held that where the expenditure is incurred for the project/feasibility report in connection with exploring the feasibility of a new business venture different from the existing line of business then such expenditure is capital expenditure and not revenue expenditure. Therefore the expenditure incurred for the purposes of setting up a new business venture which would entail acquiring assets of enduring nature was in the nature of capital expenditure.

4. However, it is urged by Mr. Mistry that the decision of this court in the matter of CIT v. J.K. Chemicals Ltd. (supra) and Trade Wings Ltd. v. CIT (supra) may not be correct. He contended that in circumstances similar to the present, the courts have taken a view that where there is a complete inter-connection, inter-lacing and inter-dependence between the existing business and the new business then the expenditure incurred for the new project is considered to be an expenditure for the purpose of business and allowed as revenue expenditure. In support of his above contention, he relied inter alia upon the following decisions:

(i) Produce Exchange Corporation Ltd. Vs. Commissioner of Income Tax (Central), Calcutta, (dealing with carry forward of business losses);

(ii) The Standard Refinery and Distillery Ltd. Vs. Commissioner of Income Tax, Calcutta, (dealing with carry forward losses);

(iii) Hindusthan Aluminium Corporation Ltd. Vs. Commissioner of Income Tax, ;

(iv) Commissioner of Income Tax Vs. Kerala State Industrial Development Corporation Ltd. (No. 1), ;

(v) Commissioner of Income Tax, Tamil Nadu-II Vs. Seshasayee Bros. P. Ltd., ;

(vi) Deputy Commissioner of Income Tax Vs. Assam Asbestos Ltd., .

5. We have not considered the aforesaid decisions and other decisions relied upon by Mr. Mistry as we are bound by the decisions of this court in the matter of J.K. Chemicals (supra) and Trade Wings Ltd. (supra) Mr. Mistry has not shown us any decision of this Court taking a contrary view.

6. We therefore, answer the above question in the affirmative i.e. in favour of the Revenue and against the assessee/applicant. The reference is accordingly disposed of. No order as to costs.

