
(1996) 12 SC CK 0012

In the Supreme Court Of India

Case No : Tax Reference Case No. 1 of 1990

Punjab State Industrial Development Corporation Ltd.,
Chandigarh

APPELLANT

Vs

Commissioner of Income Tax, Patiala

RESPONDENT

Date of Decision : 04-12-1996

Acts Referred:

Income Tax Act, 1961 — Section 256, 257, 263, 37

Citation : (1997) 140 CTR 594 : (1997) 225 ITR 792 : (1997) 10 SCC 184

Hon'ble Judges : A. M. Ahmadii, C.J; Sujata V. Manohar, J; K. Ramaswamy, J

Bench : Full Bench

Advocate : M.L. Garg and Manoj Swarup, for the Appellant; D.R. Mishra Laxmi Iyengar and v.K. Verma, for the Respondent

Final Decision : Allowed

Judgement

1. The question referred for decision reads as under:

Whether, in the facts and circumstances of the case, the Tribunal was right in law in holding that the amount of Rs. 1,50,000 paid to the Registrar of Companies, as filing fee for enhancement of capital was not revenue expenditure ?

2. Since there was a conflict of opinion on this point amongst the various High Courts, it was thought expedient by the income tax Appellate Tribunal, Chandigarh Bench, to directly refer the question for decision by this Court u/s 257 of the income tax Act, 1961, The factual background in which the question arises for determination is that the applicant, Messrs. Punjab State Industrial Development Corporation Ltd., filed the return of its total income declaring an income of Rs. 13,83,049 on June 30, 1979. In the profit and loss account an amount of Rs. 1,50,000 was claimed as revenue expenditure, the same having been paid to the Registrar of Companies as filing fee for enhancement of capital of the company. The Inspecting Assistant Commissioner of income tax (Assessment), Chandigarh, allowed the expenditure but the Commissioner of

income tax, Patiala, in exercise of the power conferred on him u/s 263 of the income tax Act revised the order suo motu as in his view the expenditure of Rs. 1,50,000 was wrongly allowed as revenue expenditure. He, therefore, enhanced the income computed by the lower authority by the amount of Rs. 1,50,000 and directed that the assessment be revised accordingly. Feeling aggrieved by the said order, the assessee preferred an appeal before the income tax Appellate Tribunal. The Tribunal upheld the order of the Commissioner placing reliance on the judgment in Groz-Beckert Saboo Ltd. Vs. Commissioner of Income Tax, of the Punjab and Haryana High Court. It was thereafter that a reference was sought u/s 256(1) of the income tax Act, but as stated above, in view of the conflict of opinion amongst the High Courts in the country the question has been directly referred to this Court for determination.

3. The issue has been answered in favour of the assessee and against the Revenue by the High Courts of Madras, Karnataka, Andhra Pradesh and Kerala in the following decisions : Commissioner of Income Tax Vs. Kisenchand Chellaram (India) P. Ltd., ; Warner Hindustan Limited Vs. Commissioner of Income Tax, ; Hindustan Machine Tools Ltd. Vs. Commissioner of Income Tax, Karnataka-II, and Federal Bank Ltd. Vs. Commissioner of Income Tax, . The High Courts of Allahabad, Himachal Pradesh, Delhi, Calcutta, Bombay, Punjab, Gujarat, Andhra Pradesh and Rajasthan have held in favour of the Revenue in the following cases : Commissioner of Income Tax, Central Vs. Modi Spinning and Weaving Mills Co. Ltd., ; Mohan Meakin Breweries Ltd. Vs. Commissioner of Income Tax (No. 1), ; Bharat Carbon and Ribbon Manufacturing Co., Ltd. Vs. Commissioner of Income Tax, New Delhi, ; Brooke Bond India Ltd. Vs. Commissioner of Income Tax, ; Bombay Burmah Trading Corporation Ltd. Vs. Commissioner of Income Tax, Bombay City-IV, ; Groz-Beckert Saboo Ltd. Vs. Commissioner of Income Tax, AHMEDABAD MANUFACTURING AND CALICO PVT. LTD. Vs. COMMISSIONER OF INCOME TAX., ; Commissioner of Income Tax Vs. Aditya Mills, Commissioner of Income Tax Vs. Multi Metals Ltd., and Vazir Sultan Tobacco Co. Ltd. Vs. Commissioner of Income Tax, . We may also state that the Calcutta High Court has affirmed this , earlier view in three subsequent decisions reported in Kesoram Industries and Cotton Mills Ltd. Vs. Commissioner of Income Tax, ; Wood Craft Products Limited Vs. Commissioner of Income Tax, and Commissioner of Income Tax Vs. Tungabhadra Industries Ltd., and so also the Gujarat High Court has affirmed its earlier view in Alembic Glass Industries Ltd. Vs. Commissioner of Income Tax, .

4. We may also indicate that this Court laid down the test for determining whether a particular expenditure is revenue or capital expenditure in the case of Empire Jute Co. Ltd. Vs. Commissioner of Income Tax, , In that decision, this Court surveyed the law on the subject in considerable detail and observed at page 10 as under:

The decided cases have, from time to time, evolved various tests for distinguishing between capital and revenue expenditure but no test is paramount

or conclusive. There is no all embracing formula which can provide a ready solution to the problem ; no touchstone has been devised. Every case has to be decided on its own facts, keeping in mind the broad picture of the whole operation in respect of which the expenditure has been incurred. But a few tests formulated by the courts may be referred to as they might help to arrive at a correct decision of the controversy between the parties. One celebrated test is that laid down by Lord Cave L. C. in *Atherton v. British Insulated and Helsby Cables Ltd.* [1925] 10 TC 155, 192 (HL), where the learned Law Lord stated:

... 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, I think that 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.

5. This test, as the parenthetical clause shows, must yield where there are special circumstances leading to a contrary conclusion. Briefly put, it is not a strait-jacket formula and the question will have to be determined in the backdrop of facts of each case. The test laid down can at best be a guide for determining whether a particular expenditure forms part of revenue expenditure or capital expenditure. The Madras High Court in *Commissioner of Income Tax Vs. Kisenchand Chellaram (India) P. Ltd.*, was dealing with a case in which the assessee had paid fees for raising the capital of a company to the Registrar of Companies and had claimed the amount paid as a revenue expenditure. It was held that without capital a company cannot carry on its business and hence the expenses incurred for increasing the capital were bound up with the functioning and financing of the business. Therefore, the assessee's claim for deduction was allowed. The view taken was that since the amount was wholly and exclusively used for the purpose of the assessee's business it was allowable as a deduction u/s 37(1) of the income tax Act. The Karnataka High Court has followed the view taken by the Madras High Court and so also has the Kerala High Court taken the same view. After considering the test laid down by this Court in *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax*, , the Kerala High Court observed as under (see *Federal Bank Ltd. Vs. Commissioner of Income Tax*,

We are of the view that the expenditure incurred for the enhancement of authorised capital is only for the purpose of bettering or improving an established business and cannot be said to be for the purpose of a new business. Viewed in a business sense, the enhancement of the authorised capital is only to broaden the capital base which will be conducive to the better conduct and efficiency and profitability of the business.

6. In this view the High Court held that the expenditure incurred by the assessee was an item of revenue expenditure. This line of reasoning has not found favour with the other High Courts which have taken a contrary view. The Calcutta High Court in *Brooke Bond India Ltd. Vs. Commissioner of Income Tax*, held that where the object of incurring an expenditure is to affect the capital structure as a

result of which certain incidental advantage flows, the expenditure will be of capital nature. It is not the acquisition of a right of a permanent character alone, the creation of which is a condition for the carrying on of the business, that could be rightly treated as an expenditure on the capital account. Capital expenditure can be incurred after a company is floated or it started business, if it resulted in bringing about capital advantage. The Andhra Pradesh High Court had in Warner Hindustan Limited Vs. Commissioner of Income Tax, , following the decision of the Madras High Court in Commissioner of Income Tax Vs. Kisenchand Chellaram (India) P. Ltd., held that the expenditure incurred was connected with functioning and financing of the assessee's business and hence the fees paid could not be treated as on capital account. However, this line of reasoning was departed from in the subsequent decision in Vazir Sultan Tobacco Co. Ltd. Vs. Commissioner of Income Tax, , wherein it was observed that where the object of incurring an expenditure is to effect a capital structure as a result of which certain incidental advantage flows, the expenditure will be of capital nature. In other words, it followed the decision of the Calcutta High Court referred to earlier. It distinguished the earlier decision in Warner Hindustan Limited Vs. Commissioner of Income Tax, holding that it was unable to appreciate the reasoning of the Madras High Court which held it to be a revenue expenditure. It, therefore, refused to extend the ratio of the decision in the earlier case of Warner Hindustan Limited Vs. Commissioner of Income Tax, to expenses incurred directly for the purpose. The Gujarat High Court in Ahmedabad Mfg. and Calico (P.) Ltd.'s case [1986] 162 ITR 800 held that the expenditure incurred being for an enduring benefit in the commercial sense could fall in the capital field. It was held that the shares issued by the company constituted its capital and being an integral part of the permanent structure of the company fell within the realm of capital expenditure. This view was reiterated in the subsequent case of Alembic Glass Industries Ltd. Vs. Commissioner of Income Tax, . The Bombay High Court in Bombay Burmah Trading Corporation Ltd. Vs. Commissioner of Income Tax, Bombay City-IV, , while dealing with the question whether the fees paid to the Registrar of Companies for enhancement of capital could be described as revenue expenditure or capital expenditure differed with a view taken by the Madras High Court and held that it runs counter to the decision of this Court in India Cements Ltd. Vs. Commissioner of Income Tax, Madras, and In Re: Tata Iron and Steel Company Ltd., , wherein it was expressly pointed out that the expenditure incurred for the issue of preference shares could not be said to be solely incurred for the purposes of the company's business. Briefly put it was held that it was an expenditure incurred directly for the purposes of expansion of the capital asset and was, therefore, of capital nature.

7. We do not consider it necessary to examine all the decisions in extenso because we are of the opinion that the fee paid to the Registrar for expansion of the capital base of the company was directly related to the capital expenditure incurred by the company and although incidentally that would certainly help in the business of the company and may also help in profit-making, it still retains

the character of a capital expenditure since the expenditure was directly related to the expansion of the capital base of the company. We are, therefore, of the opinion that the view taken by the different High Courts in favour of the Revenue in this behalf is the preferable view as compared to the view based on the decision of the Madras High Court in Commissioner of Income Tax Vs. Kisenchand Chellaram (India) P. Ltd., . We, therefore, answer the question raised for our determination in the affirmative, i.e., in favour of the Revenue and against the assessee.

8. The tax reference will stand answered accordingly with no order as to costs.