
(1968) 08 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Income-tax Reference No. 21 of 1964

Raj Singh Baldev Kishan

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 06-08-1968

Acts Referred:

Income Tax Act, 1922 — Section 10(2)

Citation : (1969) 72 ITR 735

Hon'ble Judges : P.C. Jain, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : Dalip Chand Gupta, for the Appellant; D.N. Awasthy and B.S. Gupta, for the Respondent

Judgement

1. At the instance of the assessee, the Income Tax Appellate Tribunal, (Delhi Bench "B"), has referred the following question of law for our opinion :

"Whether, in the facts and circumstances of the case, the sum of Rs. 5,934 paid as lease money was rightly disallowed as an item of capital expenditure ?"

2. In order to appreciate the contentions that have been advanced before us, it will be proper to set out the relevant paras, of the statement of the case, wherein the facts are stated :

"The assessee owns a brick-kiln. For the purpose of extracting earth for the manufacture of bricks, the assessee took on lease certain pieces of land for a period of ten years. An English translation of one of the lease deeds along with supplement thereof is annexed herewith as annexure "A" and forms part of the case. We are told that the other leases were also on the same terms. The lease money of Rs. 5,934 was debited in the trading account and was claimed as a revenue expense incurred wholly and exclusively for the purposes of the business. The Income Tax Officer allowed one-tenth of the claim and disallowed the balance in the view that proportionate expenses of the year under reference should be allowed. When the matter came up in appeal before the Appellate

Assistant Commissioner, he held that the expenditure ranked as capital and accordingly disallowed the entire claim to the tune of Rs. 5,934. Copies of the orders of the Income Tax Officer dated February 13, 1962, and that of the Appellate Assistant Commissioner dated July 27, 1962, are annexed herewith as annexures "B" and "C" respectively and form part of the case. The finding of the Appellate Assistant Commissioner was upheld by the Tribunal. The order of the Tribunal dated 17th April, 1963, is annexed herewith as annexure "D" and forms part of the case."

3. It will be apparent from the statement of the facts that the assessee owns a brick-kiln. In order to run the brick-kiln, he needed earth and, therefore, took on lease the pieces of land specified in the lease-deed, annexure "A", to the statement of the case. In the deed of lease, the relevant paragraph is 2, and is quoted below :

"That the lessee firm, M/s. Raj Singh Baldev Kishan, brick-kiln owner shall take possession of the leasehold after payment of the mortgage money to the previous mortgagees, Mansa Singh and Ujjagar Singh, residents of village Alloram. The land which was previously mortgaged with Tej Kaur had been redeemed. After taking possession the firm, M/s. Raj Singh Baldev Kishan, shall either dig earth 5 ft. deep for manufacturing bricks or for cultivation purposes for a period of 10 years beginning from Namani 2018 to Namani 2028 without any interference on my part. During this period I shall have no concern with this land."

4. The object of the lease was either to dig 5 ft. deep for manufacturing bricks or for cultivation purposes. The period of the lease was 10 years. After the expiry of the period of 10 years, the land was to revert back to the owner.

5. The Income Tax Officer allowed one-tenth of the expenditure of the lease as revenue expense and the remaining nine-tenth was to be distributed in the remaining nine years. On the assessee's appeal, the Appellate Assistant Commissioner came to the conclusion that the Income Tax Officer was wrong in allowing one-tenth as revenue expenditure.

6. According to the Appellate Assistant Commissioner, the entire expenditure was of a capital nature. The assessee, who was dissatisfied with this order, approached the Income Tax Appellate Tribunal; and the Tribunal affirmed the decision of the Appellate Assistant Commissioner of Income Tax.

7. Mr. Dalip Chand Gupta, learned counsel for the assessee, principally relies upon the decision of the Lahore High Court in (1947) 15 ITR 185 Lahore as interpreted by the Supreme Court in Pingle Industries Ltd., Secunderabad Vs. Commissioner of Income Tax, Hyderabad, . According to the learned counsel, the assessee took this land on lease for the purpose of acquiring the raw material, that is, earth, for manufacturing bricks, and, therefore, essentially the expenditure was in the nature of a revenue expenditure. Mr. D.N. Awasthy, who appears for the department, on the other hand, contends that the acquisition of

the lease-hold rights was an acquisition of a capital nature. In other words, it was an enduring asset. The learned counsel lays great stress on the clause in the lease-deed that the land could be used for cultivation and that the landlord was to have no concern with the land for a period of ten years. In our opinion, the contention of Mr. Gupta is sound and that of the learned counsel for the department is not in consonance with the decision of the Supreme Court in Pingle Industries case. The Supreme Court in Assam Bengal Cement Co. Ltd. Vs. The Commissioner of Income Tax, West Bengal, observed as follows :

"This synthesis attempted by the Full Bench of the Lahore High Court truly enunciates the principles which emerge from the authorities. In cases where the expenditure is made for the initial outlay or for the extension of a business or a substantial replacement of the equipment, there is no doubt that it is capital expenditure. A capital asset of the business is either acquired or extended or substantially replaced and that outlay whatever be its source whether it is drawn from the capital or the income of the concern is certainly in the nature of capital expenditure. The question, however, arises for consideration where expenditure is incurred while the business is going on and is not incurred either for extension of the business or for the substantial replacement of its equipment. Such expenditure can be looked at either from the point of view of what is acquired or from the point of view of what is the source from which the expenditure is incurred. If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly attributable to capital and is of the nature of capital expenditure. If, on the other hand, it is made not for the purpose of bringing into existence any such asset or advantage but for running the business or working it with a view to produce the profits it is a revenue expenditure. If any such asset or advantage for the enduring benefit of the business is thus acquired or brought into existence it would be immaterial whether the source of the payment was the capital or the income of the concern or whether the payment was made once and for all or was made periodically. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. The source or the manner of the payment would then be of no consequence. It is only in those cases where this test is of no avail that one may go to the test of fixed or circulating capital and consider whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital. If it was part of the fixed capital of the business it would be of the nature of capital expenditure and if it was part of its circulating capital it would be of the nature of revenue expenditure. These tests are thus mutually exclusive and have to be applied to the facts of each particular case in the manner above indicated. It has been rightly observed that in the great diversity of human affairs and the complicated nature of business operations it is difficult to lay down a test which would apply to all situations. One has therefore got to apply these criteria one after the other from the business point of view and come to the conclusion whether on a fair appreciation of the whole situation the expenditure incurred in

a particular case is of the nature of capital expenditure or revenue expenditure in which latter event only it would be a deductible allowance u/s 10(2)(xv) of the Income Tax Act. The question has all long been considered to be a question of fact to be determined by the Income Tax authorities on an application of the broad principles laid down above and the courts of law would not ordinarily interfere with such findings of fact if they have been arrived at on a proper application of those principles."

8. Again the Full Bench decision came up for consideration in the Pingle Industries case. There was difference of opinion between the learned judges of the Supreme Court. The majority judgment was delivered by Hidayatullah J. (as he then was). At page 86 of the report, while dealing with Benarsidas's case, Hidayatullah J. observed as follows:

"In Benarsidas's case, the person sought to be assessed was a manufacturer of bricks, He obtained certain lands for digging out earth for his manufacture. Under the deeds which gave him this right, he could dig up to a depth of 3 feet to 3 1/2 feet. He had no interest in the land, and as soon as the earth was removed, his right was at an end. It was held in. that case that the main object of the agreements was the procuring of earth as raw materials, and by the expenditure the lessee had not acquired any advantage of a permanent or enduring character. It is, however, to be noticed that the duration of the leases was from six months to three years. The Full Bench referred to some other leases in which the duration was longer, and observed:

"There are other agreements which are not before us and it seems that the items mentioned in the question referred relate to those agreements as well. We do not know the nature of the agreements, but the question can be answered by saying that expenses incurred during the year of assessment for purchase of earth on basis of agreements of the nature mentioned in the case of Benarsidas or of the nature like exhibit T. E. are admissible deductions, while sums spent for obtaining leases for a substantially long period varying from 10 to 20 years cannot be held to be valid deductions if they amount to an acquisition of an asset of an enduring advantage to the lessee."

It appears that the Full Bench was persuaded to this view from two considerations. The first was that what was acquired was earth with no interest in land, and the other was the short term of the leases.

The approval given to Benarsidas's case by this court does not extend beyond the summary of the tests settled in it, and the tests have to be applied to the facts of each case in the manner indicated by this court. But the actual decision was not before this court, and cannot be said to have been approved. The agreements in the present case are long-term contracts. They give the right to extract stones in six villages without any limit by measurement or quantity. They give the right exclusively to quarry for a number of years. This case is thus very different on facts. Further, the duration of the right which seems to have weighed

with the Full Bench in the Punjab High Court has little to do with the character of the expenditure even if it be a relevant factor to consider. In HENRIKSEN (INSPECTOR OF TAXES) Vs. GRAFTON HOTEL LTD., the right was only for 3 years, but monopoly value having been paid for it, the result was a capital asset of an enduring character."

9. It, therefore, appears to us that the observations of the Supreme Court clearly conclude the matter. The principal plank of Mr. Awasthy, learned counsel for the department, was on the observations of the Full Bench which have been explained above by their Lordships of the Supreme Court. However, Mr. Awasthy sought to raise another contention, namely, that the lease was for agricultural purposes, and, therefore, it was an asset of an enduring nature. This contention he cannot be allowed to raise at this stage. Neither before the Income Tax Officer, the Appellate Assistant Commissioner nor the Tribunal, this was the department's case. It was precisely for this reason that we set out the statement of the case. The entire controversy proceeded on one single footing, namely, that the land was solely obtained on lease for the purpose of manufacturing bricks by the assessee; and the question was, whether such a lease, which was for a period of ten years, was an asset of an enduring nature, and, therefore, a capital asset, or it was an acquisition of raw material for the purpose of manufacturing bricks and thus a revenue expense. As we have already said, the matter stands concluded by the decision of the Supreme Court in Pingle Industries" case, where the Full Bench of the Lahore High Court, on which Mr. Awasthy also principally relies, was explained ; we see no escape from this conclusion that the expenditure in question is revenue expense.

10. Mr. Awasthy relied upon the decision of the Supreme Court in M.A. Jabbar Vs. Commissioner of Income Tax, Andhra Pradesh, Hyderabad, for his contention that the expense in question was a capital expense. That case proceeded on its own peculiar facts. Suffice it to say that neither the decision in Pingle Industries" case nor the decision of the Lahore High Court were either discussed or considered therein.

11. Mr. Awasthy then relied on the decision of the Supreme Court in Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., for the contention that we should permit him to urge the contention that because the land was taken for cultivation purposes, therefore, it is an asset of an enduring nature. Again, this decision does not help the learned counsel. In that case, the new contention was implicit in the question referred. That is not so, so far as the present case is concerned.

12. For the reasons recorded above, we return the answer to the question referred in the negative. In other words, the sum of Rs. 5,934 was an expenditure of a revenue nature and not a capital expenditure. We make no order as to costs.