

(1999) 09 KAR CK 0061

In the Karnataka High Court

Case No : Income Tax R.C. No. 43 of 1996

Sankranti Agarbathi Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-09-1999

Acts Referred:

Income Tax Act, 1961 — Section 256 (1)

Citation : (2000) 243 ITR 712

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : G. Sarangan, for Parthasarathi, for the Appellant; M.V. Seshachala, for the Respondent

Judgement

1. The Income Tax Appellate Tribunal has referred the following questions of law in respect of the assessment year 1983-84 u/s 256(1) of the Income Tax Act, 1961.

"1. Whether, on the facts the Tribunal was justified in holding that the litigation expenses of Rs. 60,000 was capital expenditure and was not liable to be allowed in computing the income of the assessee ?

2. Whether, on the facts, the Tribunal was justified in holding that the litigation expenditure is capital expenditure even when the expenditure incurred was in connection with an acquisition of a business asset, demanding a specific performance of the contract ?"

2. The assessee is a firm carrying on trade in Bangalore. It had entered into contract with a trust to purchase a property but the trust did not convey the property. The assessee instituted a suit during the previous year and expended a sum of Rs. 60,000 which it claimed in the revenue field. In appeal, the Commissioner of Income Tax (Appeals) deleted the sum of Rs. 60,000 which was disallowed by the Assessing Officer. The Revenue thereupon went in appeal before the Tribunal challenging the order of the deletion. The Revenue contended

before the Tribunal that the expenditure claimed by the assessee was unmistakably in the capital field, whereas the assessee contended that the expenditure was incurred in connection with the business and therefore was allowable in the revenue field.

3. The assessee relied upon the decision of the Supreme Court in the case of *Dalmia Jain and Co. Ltd. Vs. Commissioner of Income Tax, Bihar, Orissa and Patna*, , and the decision of the Madras High Court in the case of *Ghansham Singh Vs. Commissioner of Income Tax, Tamil Nadu*, . On the other hand, the Revenue cited the decision of the Allahabad High Court in the case of *PLASTIC PRODUCTS LTD. Vs. COMMISSIONER OF Income Tax, U. P.*, , and the decision of the Patna High Court in the case of *Indian Copper Corporation Ltd. Vs. Commissioner of Income Tax*, . The Tribunal distinguished the decisions relied upon by the assessee and relied on the dictums cited by the authorities of the Revenue. The Tribunal held that the sum of Rs. 60,000 spent by the assessee for litigation during the previous year was not a deductible expenditure, accordingly, the order of the Commissioner of Income Tax (Appeals) was reversed. The assessee filed the reference application and on the application, reference was made by the Income Tax Appellate Tribunal.

4. The contention of counsel for the assessee is that the assessee wanted to acquire the property for the business and naturally entered into an agreement of sale with the trust and there was a breach committed by the trust in performing their part of the contract. Therefore a suit for specific performance had to be filed. The expenditure so incurred was in connection with the business and therefore is allowable in the revenue field. It is further contended that the expenditure is incapable of being capitalised in the event the assessee should lose the litigation or, for that matter, in a future year since the expenditure had been made in this year. The case of *Dalmia Jain and Co. Ltd. Vs. Commissioner of Income Tax, Bihar, Orissa and Patna*, , was relied on for the following proposition (headnote) :

"Where litigation expenses are incurred by the assessee for the purpose of creating, curing or completing the assessee's title to the capital, then the expenses incurred must be considered as capital expenditure. But if the litigation expenses are incurred to protect the business of the assessee, they must be considered as a revenue expenditure."

5. The decision of the Madras High Court in the case of *Ghansham Singh Vs. Commissioner of Income Tax, Tamil Nadu*, , was also relied upon.

6. It is the contention of the Revenue that the expenditure was unmistakably in the capital field. If the assessee has succeeded in getting a conveyance in this year itself the whole of it would have gone to make up the cost of acquiring the asset. The case of *PLASTIC PRODUCTS LTD. Vs. COMMISSIONER OF Income Tax, U. P.*, and the decision of the Patna High Court in the case of *Indian Copper Corporation Ltd. Vs. Commissioner of Income Tax*, , were relied upon by the

Revenue.

7. The authorities relied on by the assessee do not apply to the facts of this case. In the case of *Dalmia Jain and Co. Ltd. Vs. Commissioner of Income Tax, Bihar, Orissa and Patna*, , the assessee had to spend to defend an action brought by another party. The assessee was a lessee from the Government and there was litigation brought against the assessee. The expenditure incurred in connection with the litigation for defending the lease was held to be allowable in the revenue field. But that is not the case here.

8. In *Ghansham Singh Vs. Commissioner of Income Tax, Tamil Nadu*, , it is held that the expenditure laid out for acquisition of a capital asset is attributable to the capital field. This is what the assessee has done in this case. To acquire an (sic) litigation in a court of law. Should the asset be acquired, it would be undoubtedly a capital asset. Correspondingly, if the assessee loses the litigation it must be held to be a capital loss. Therefore, the issue of bringing the same into revenue field does not arise. On the other hand, the case reported in *PLASTIC PRODUCTS LTD. Vs. COMMISSIONER OF Income Tax, U. P.*, , is applicable to the facts of the case. Even the case reported in a case of *Indian Copper Corporation Ltd. Vs. Commissioner of Income Tax*, , is a case where a suit had been filed for specific performance of an agreement for grant of extension of the lease. Though it is not acquisition of property but a lease, it was held that the expenditure was not deductible from the income.

9. In the light of the above, we find that the order of the Income Tax Appellate Tribunal is not liable to be reconsidered. Accordingly, the reference is answered in favour of the Revenue and against the assessee.