

(1997) 11 DEL CK 0080

In the Delhi High Court

Case No : IT Ref. No"s. 234 and 235 of 1978

Triveni Engineering Works Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Citation : (1999) 152 CTR 433 : (1998) 232 ITR 639 : (1998) 100 TAXMAN 19

Hon'ble Judges : R.C. Lahoti, J;J.B. Goel, J

Bench : Division Bench

Advocate : S.K. Aggarwal and Vinay Vaish, R.D. Jolly and Ms. Premlata Bansal, for the Appellant;

Judgement

R.C. Lahoti, J.—This common order shall govern the disposal of IT Refs. Nos. 234 of 1978 and 235 of 1978, both at the instance of the assessed and arising out of two assessment years seeking opinion of the High Court on the following questions of law :

Asst. yr. 1971-72

"1. Whether, on the facts and in the circumstances of the case, the amount of Rs. 4 lakhs debited by the assessed to deferred revenue expenditure technical know-how payment was expenditure of capital nature ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in holding that the assessee-company was not entitled to depreciation in respect of the said amount of Rs. 4 lakhs ?

3. Whether, on the facts and in the circumstances of the case, the assessed was entitled to the development rebate amounting to Rs. 84,513 ?

4. Whether, on the facts and circumstances of the case, the payments of Rs. 5,000 to Kreli (India) (P) Ltd. Rs. 11,000 to M. M. Bilaney & Co., and Rs. 3,000 to M.M. Consultancy Bureau constituted revenue expenditure ?"

Asst. yr. 1972-73

"1. Whether, on the facts and in the circumstances of the case, the amount of Rs. 4 lakhs debited by the assessed to deferred revenue expenditure technical know-how payment was expenditure of capital nature ?

2. Whether, on the facts and circumstances of the case, the Tribunal erred in law in holding that the assessee-company was not entitled to depreciation in respect of the said amount of Rs. 4,00,000 ?

3. Whether, on the facts and in the circumstances of the case, the payment of Rs. 20,000 to S. P. Chopra and Rs. 7,500 paid to D. S. Dang constituted revenue expenditure ?"

Questions Nos. 1 and 2 (for the asst. yrs. 1971-72 and 1972-73) :

2. So far as questions Nos. 1 and 2 for the two assessment years are concerned, it was conceded at the Bar that in view of two decisions of the Delhi High Court rendered in the case of this very assessed for the earlier assessment years, the questions have been rendered merely academic and hence need not be answered. The decisions are *The Triveni Engineering Works Ltd. Vs. The Commissioner of Income Tax, New Delhi*, and *Triveni Engineering Works Ltd. Vs. Commissioner of Income Tax*, . The former decision is in a reference arising out of the asst. yrs. 1965-66 to 1968-69 relating to this very amount of expenditure. The High Court has held that the expenditure was allowable as revenue expenditure. The benefit has already been claimed by the assessed for the earlier assessment years. In view of the expenditure having been held to be not of capital nature the question of depreciation does not arise, No answer is called for to the questions.

Question No. 3 for the asst. yr. 1971-72

3. The assessed claimed development rebate of Rs. 84,513 on the amount of Rs. 2,94,872 being the cost of new plant and machinery. The ITO did not allow the development rebate on the ground that the assessed had failed to create the statutory development rebate reserve during the asst. yr. 1970-71. From a bare reading of s. 34(3)(a) along with the Explanation (which has been given retrospective effect) it is clear that before any development rebate can be allowed as a deduction the conditions laid down in s. 34 have to be satisfied. One of the conditions is that a reserve has to be created in the previous year. Admittedly, the assessed had not created any such reserve which could have been done merely by book entry and without regard to the fact that the actual funds for putting into the reserve were available or not. Such is the view taken by the Gujarat High Court in *Additional Commissioner of Income Tax Vs. Shri Subhlaxmi Mills Ltd.*, with which we find ourselves in entire agreement. Inasmuch as the assessor's claim for development rebate was disallowed for its failure to have created a reserve, the view taken by the Tribunal cannot be found fault with. Question No. 3 is, Therefore, answered in the negative, i.e., against the

assessed and in favor of the Revenue.

Question No. 4 for the asst. yr. 1971-72

4. An amount of Rs. 5,000 was paid to Kreli (India) (P) Ltd., for preparing a project report on manufacturing insecticide formulation - an item to be used for improving the quality of cane produced in the area by individual agriculturists and societies. Since the manufacturing of insecticides formulation was not carried out by the assessed and the amount paid was for the project report only, the ITO disallowed the same as capital expenditure.

Rupees 11,000 were paid by the assessed to M. M. Bilaney & Co., and Rs. 3,000 were paid to M.M. Consultancy Bureau, for survey report on extra malarial alcohol. The assessed wanted these reports to put to a better use its by-products, namely, molasses, the assessed did not produce any alcohol during the year under consideration and hence the ITO treated these to be capital expenditure.

All the three items of expenditure were claimed by the assessed as business expenditure.

The Tribunal held that all the three items of expenditure were incurred with a view to manufacturing new products and utilising by-products of the sugar units and if that was so, the question of allowance of these expenses as business expenses did not arise, as they were definitely of capital nature being expenses preliminary to manufacturing the various products. The Tribunal, Therefore, affirmed the disallowance made by the authorities below.

5. The test to discriminate between a capital and a revenue expenditure is not straight. An item of expenditure though incurred wholly and exclusively for the purpose of the business may nevertheless be inadmissible as an allowance if it is of a capital nature. The borderline between a capital expenditure and a revenue expenditure is a blurred one. Different minds may come to different conclusions and may yet have valid reasons justifying each of the two view-points. In the leading case of *Atherton v. British Insulated and Helsby Cables Ltd.* (1925) 10 Tax Cas 155 : (1926) AC 205, it was held that when an expenditure is made not only once and for all but also with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, there is a 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. A perusal of the available case law on the point reveals that the test of enduring benefit has been accepted and applied by and large. It has also been held that the expenditure is to be attributed to capital, if it be made with a view to bringing an asset or advantage into existence and it is not necessary that it should have that result. [*Collins v. Joseph Adamson & Co.* (1939) 7 ITR 92 : TC 17R.547.

In *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax*, , their Lordships have

held :

"There may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and, it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, Therefore, not a certain or conclusive test and it cannot be applied blindly and mechanically without regard to the particular facts and circumstances of a given case."

6. In the case at hand the amount spent on the project reports was not for the purpose of facilitating the assessee's existing trading operations or enabling management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched. If only the project reports had been successfully accepted and put into implementation, the assessee would have gone into manufacturing of a new product which would have certainly required investment of fresh capital and coming into existence of additional fixed assets.

The expenditure was, Therefore, attributable to capital having been incurred with a view to bringing an asset or advantage into existence and having enduring benefit. Merely because the project did not materialise, the nature of the expenditure would not change to revenue.

Question No. 4 is, Therefore, answered in the negative, i.e., in favor of the Revenue and against the assessee.

Question No. 3 for the asst. yr. 1972-73

7. At the very outset we may state that part of the question is misconceived and does not arise on the facts and in the circumstances of the case. As pointed out by learned counsel for the assessee, the CIT(A) has vide para. 2(b) of his order (see p. 28 of the paper-book) allowed the item of Rs. 7,500 as deductible expenditure to the assessee. The Department did not go in appeal. The Tribunal has erroneously assumed the amount of Rs. 7,500 as not Constituting revenue expenditure.

So far as the amount of Rs. 20,000 paid to S. P. Chopra is concerned that was incurred on account of legal and professional charges in connection with merger of the company.

In Godfrey Phillips India Ltd. Vs. Commissioner of Income Tax, , it has been held

that legal expenses incurred in connection with the amalgamation of the company are of capital nature. We find ourselves in respectful agreement with the view so taken.

In COMMISSIONER OF INCOME TAX Vs. BOMBAY DYEING and MANUFACTURING CO. LTD., , their Lordships have held that an expenditure incurred towards professional charges of the solicitors' firm for the services rendered in connection with the amalgamation were deductible as revenue expenditure, if it was found that the two companies were carrying on complementary business and the amalgamation was necessary for the smooth and efficient conduct of the business, as it was an expenditure laid out wholly and exclusively for the purpose of the business of the assessee. In the case at hand there is neither such plea raised nor such facts found by the Tribunal.

For the foregoing reasons, it is held that question No. 3 for the asst. yr. 1972-73 is redundant and need not be answered to the extent of Rs. 7,500. The question to the extent of Rs. 20,000 is answered in the negative, i.e., in favor of the Revenue and against the assessee.

8. Both the references stand answered accordingly. No order as to costs.