

(1998) 07 AP CK 0096

In the Andhra Pradesh High Court

Case No : Income-tax Case No. 27 of 1993

V.B.C. Industries Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 03-07-1998

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 256(2), 37(1)

Citation : (1999) 236 ITR 335

Hon'ble Judges : Y.V. Narayana, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : C. Kodanda Ram, for the Appellant; S.R. Ashok, for the Respondent

Judgement

1. This case is u/s 256(2) of the Income Tax Act, 1961, against the decision of the Income Tax Appellate Tribunal (ITAT), Hyderabad, in R. A. No. 7/Hyd of 1992 in I. T. A. No. 1655/Hyd of 1990, dated January 29, 1993.

2. The petitioner-company was dealing in the business of bottling aerated water and it was looking for diversification to the other areas. The petitioner-company subsequently altered the objects clause of the memorandum of association so as to pursue other features. In that direction the petitioner-company approached V. B. C. Chemicals Limited, which is another company for identification and for preparation of two project reports. Pursuant to an understanding between the petitioner-company and the said V. B. C. Chemicals Limited, the petitioner-company had compensated V. B. C. Chemicals Limited for the benefits which it had sought to draw. Before the assessing authority for the assessment year 1988-89, the petitioner-company claimed exemption for the amount of Rs. 11,52,506 on the ground that the said amount is only revenue expenditure and not capital expenditure. However, the assessing authority rejected the claim of the petitioner-company following the decision of various courts and held that the expenditure incurred by the petitioner-company is only capital expenditure and not revenue expenditure and as such the company is not entitled to seek benefits under the head "revenue expenditure". The matter was, however, carried before

the Commissioner (Appeals) who in turn confirmed the orders of the assessing authority. Yet another effort was made by the assessee taking the matter before the Income Tax Appellate Tribunal. Though the assessee claimed that the expenditure of Rs. 11,52,506 sought to be treated as revenue expenditure and necessary benefits under the Income Tax Act have to be granted to the assessee, the Income Tax Appellate Tribunal also rejected the request of the assessee. Thereupon the assessee formulated the following five questions and sought to refer the same for the opinion of this court and required the Tribunal to state a case :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the expenditure of Rs. 11,52,506 incurred by the assessee in connection with the project development and investigation, is with a view to bringing into existence an asset or advantage of an enduring nature ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the said expenditure incurred is not for the same business that was being carried on by the assessee, on the mere ground that it relates to a new line of activity ?

3. Whether, on the facts and in the circumstances of the case, the Tribunal, having conceded that the decision of the Karnataka High Court in the case of Commissioner of Income Tax Vs. Bharat Earth Movers Ltd., , is applicable to the assessee, is correct in applying the decision of the Supreme Court in Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, , in spite of the jurisdictional High Court's observation in the case of Commissioner of Income Tax Vs. Venkateswara Transmission (P.) Ltd., , that the Supreme Court did not consider the question whether the expenditure is capital or revenue in that case ?

4. Whether, on facts and in the circumstances of the case, the Tribunal is correct in holding that the two decisions of the jurisdictional High Court in the case of Commissioner of Income Tax Vs. Barium Chemicals Ltd., and in the case of Commissioner of Income Tax Vs. Sri Krishna Bottlers Pvt. Ltd., are applicable to the facts of the case, even though the question whether the expenditure is capital or revenue did not come up for consideration in those two cases ?

5. Whether, on the facts and in the circumstances of the case, the Tribunal is correct in holding that the decision of the Hyderabad Bench of the Tribunal in Coromandel Fertilizers Ltd.'s case [1955] 29 ITR 455 , is not applicable to the facts of this case for the reason that the decision of the Supreme Court and the jurisdictional High Court in the case of Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, and Commissioner of Income Tax Vs. Venkateswara Transmission (P.) Ltd., , respectively, were not considered in that decision, though the question whether the expenditure is capital or revenue did not come up for consideration in those decisions ?"

The Tribunal refused to refer the questions on the ground that the issues raised

have already been decided against the assessee in a series of decisions in Scientific Engineering House (P) Ltd. Vs. Commissioner of Income Tax, Andhra Pradesh, , Commissioner of Income Tax Vs. Sri Krishna Bottlers Pvt. Ltd., and Commissioner of Income Tax Vs. Barium Chemicals Ltd., . While holding so the Tribunal refused to refer the questions, on the ground that no referable question of law arises for seeking the opinion of this court. It is this order that is assailed before us.

3. Learned counsel for the petitioner-company, Sri C. K. Kodandaram, apart from taking us to the various decisions of the Supreme Court as well as of this court, has drawn our attention to a Full Bench decision of this court in Praga Tools Ltd. Vs. Commissioner of Income Tax, . While drawing our attention to the decision cited supra learned counsel tried to distinguish between capital expenditure and revenue expenditure. According to learned counsel, the expenditure incurred by the assessee which has made payments to V. B. C. Chemicals Pvt. Ltd. are in the nature of revenue expenditure and not capital expenditure. Learned counsel stated that if the assessee tries to draw the enduring benefit of a permanent nature, that would appear to be a capital expenditure. He further contended that even capital expenditure incurred in connection with obtaining equipment may be a revenue expenditure in another situation. No hard and fast rules could be formulated as to whether one type of expenditure is capital and the other is revenue. While so contending, learned counsel stated that the Tribunal has missed the bus and without appreciating the real test that has to be applied as to the determination whether an expenditure is capital or revenue, has rejected the plea of the assessee on the reference of the question of law formulated. Therefore, he pleaded that the assessee has made out reasonable questions of law for the opinion of this court, which, according to learned counsel, are debatable and, therefore, pleaded before us to direct the Tribunal to state a case on the questions.

4. We have heard learned standing counsel for the Revenue, Sri S. R. Ashok, in this regard. Having heard both learned counsel and having examined the decisions referred to by learned counsel and in the light of the order passed by the Tribunal, we are, prima facie, convinced that a debatable issue is alive for the opinion of this court, and whether it is a capital expenditure or revenue expenditure, would only be decided when the matters are determined by the court on a full length of arguments with reference to various facets of the expenditure incurred by the assessee-company. We, therefore, direct the Tribunal to state a case and refer the question of law formulated by the assessee for the opinion of this court.

5. The I. T. C. is accordingly ordered. No costs.