

## **Commissioner Of Income-Tax, West ... vs Kalyanji Mavji & Company on 14 January, 1980**

**Equivalent citations: 1980 AIR 640, 1980 SCR (2) 758, AIR 1980 SUPREME COURT 640, 1980 TAX. L. R. 374, (1980) 2 SCR 758, 1980 7 TAX LAW REV 1 (SC), 1980 SCC (TAX) 217, (1980) 15 CUR TAX REP 154 (SC), 1980 (1) ITJ 492, 1980 UPTC 787, (1980) 3 TAXMAN 35, 57 TAXATION 14, 1980 UJ (SC) 484, (1980) 1 SCJ 512, (1980) 122 ITR 49, 1980 (2) SCC 78**

**Author: R.S. Pathak**

**Bench: R.S. Pathak, N.L. Untwalia**

PETITIONER:

COMMISSIONER OF INCOME-TAX, WEST BENGAL-IICALCUTTA

Vs.

RESPONDENT:

KALYANJI MAVJI & COMPANY

DATE OF JUDGMENT14/01/1980

BENCH:

PATHAK, R.S.

BENCH:

PATHAK, R.S.

UNTWALIA, N.L.

CITATION:

1980 AIR 640

1980 SCR (2) 758

1980 SCC (2) 78

ACT:

Indian Income-Tax Act 1922 (11 of 1922), Ss. 10(2)(v) & 10(2)(xv)-Assessee doing business in coal-Working various collieries-One colliery requisitioned for military use-Later derequisitioned-Expenditure incurred for resuming operation of Colliery-Whether capital or revenue expenditure.

HEADNOTE:

The respondent-assessee carried on business in coal as the owner of various collieries. One of the collieries, was occupied by the military from 1942 until it was derequisitioned in 1955. During that period the assessee did

not work the said colliery: although the business in coal and working of the other collieries were carried on. While the colliery remained under military occupation the assessee incurred expenditure in respect of the colliery on account of payment of surface rent, minimum royalty and salary for the watch and ward staff, which expenditure was claimed and allowed as business expenditure of the assessee. After the colliery was handed over to the assessee upon derequisition the assessee incurred an expenditure of about Rs. 1.6 lakhs in renovating the building, reconditioning the machinery and clearing the land of all debris accumulated over a number of years.

In the assessment proceedings for the assessment year 1959-60 the assessee claimed deduction of the aforesaid amount under section 10(2)(xv) of the Indian Income Tax Act. The deduction was disallowed by the Income Tax officer on the ground that the expenditure was capital in nature.

The appeals by the assessee to the Appellate Assistant Commissioner and the Income Tax Appellate Tribunal were dismissed.

In the reference to the High Court at the instance of the assessee the High Court observed that the business of the assessee had to be considered as a whole and not on the basis of its different sources of supply or units of production, and held that on the facts admitted and found it could not be said that any fresh asset had been acquired by the assessee by spending Rs. 1.6 lakhs and that the expenditure was incurred by the assessee for the purpose of carrying on an existing concern. The expenditure was, therefore, in the nature of a revenue expenditure.

In the appeal by the Revenue to this Court, it was contended: (a) where repairs are effected to buildings and machinery a deduction under section 10(2) is permissible only in respect of "current repairs" and repairs which are not "current repairs" are not intended to be the subject of relief, (b) the repairs made by the assessee cannot be described as "current repairs", and (c) if section 10(2) (v) is the relevant clause, being the specific provision in respect of expendi-

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ture on "current repairs" to buildings and machinery, there is no justification for relying on section 10(2)(xv) a residuary clause.

Dismissing the appeal,

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HELD: 1. The High Court was right in holding that the expenditure was not of a capital nature. [764 E]

2. The expenditure of Rs. 1.6 lakhs was expenditure laid out as part of the process of profit earning. The nature of the expenditure was clearly revenue in character. [764 D]

3. There can be little doubt that the expenditure incurred was incidental to the business of the assessee. It

was involved in renovating the buildings, reconditioning the machinery and clearing the debris, from the land, for the purpose of resuming the operation of the colliery. The expenditure was laid out wholly for the purpose of the business. [763 D]

4. There must be strong evidence that in the case of repairs which are not "current repairs", the Legislature intended a departure from the principle that an expenditure laid out or expended wholly and exclusively for the purposes of the business, and which expenditure is not capital in nature, should not be allowed in computing the income from business. There is nothing in the language of section 10(2) (v) which declares or necessarily implies that repairs, other than, "current repairs", will not qualify for the benefit of that principle. On accepted commercial practice and trading principles an item of business expenditure must be deducted in order to arrive at the true figure of profits and gains for tax purposes. [762 G-763 A]

C.I.T. v. Chitnis 50 I.A. 292; Motipur Sugar Factory Ltd. v. C.I.T. Bihar and Orissa, 28 I.T.R. 120; Devi Films Ltd. v. C.I.T. Madras, 75 I.T.R. 301; Badridas Daga v. C.I.T. 34 I.T.R. 10, 15; Calcutta Co. Ltd. v. C.I.T. West Bengal, 37 I.T.R. 1, 9; the Law Shipping Co. Ltd. v. Commissioners of Inland Revenue 12 Tax Cases 621,625 referred to.

The scope of Section 10(2)(xv) should be construed liberally. [763 B]

In the instant case even if the expenditure made by the assessee cannot be described as "current repairs" he is entitled to invoke the benefit of s. 10(2)(xv). [763 C]

5. Whether an expenditure can be described as capital or revenue falls to be decided by serial tests, each one of which approaches the question from one perspective or another, conditioned by the particular facts of each case. [763 F]

Assam Bengal Cement Co. Ltd. v. C.I.T. West Bengal (1955) 27 I.T.R. 34 referred to.

In the instant case the business of the assessee was coal mining and it was carried on by the operation of a network of collieries. Each colliery was a unit of production. While the several units of production continued to be employed and the business continued to be carried on, one alone of all the units, was compelled to suspend production. The suspension was due to the property being requisitioned for military use. As soon as it was derequisitioned the assessee

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took measures to resume production of coal. The buildings were renovated, the machinery reconditioned and the accumulated debris removed from the land. No new asset was brought into existence, no advantage for the enduring benefit of the business was acquired. The activity which was continuously in operation but had been temporary suspended

was resumed. [763 G-764 C]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2098 of From the Judgment and Order dated 5-8-1971 of the Calcutta High Court in Income Tax Reference No. 109/65.

D.V. Patel, J. Ramamurthy and Miss A Subhashini for the Appellant.

S. R. Banerjee, Mrs. Indu Goswamy and Arvind Minocha for the Respondent.

The Judgment of the Court was delivered by PATHAK, J.: This appeal by certificate granted by the High Court at Calcutta under s. 66A(2) of the Indian Income- tax Act, 1922 is directed against the judgment dated August 5, 1971 of that High Court disposing of an income-tax reference.

The respondent assessee is a registered firm and owns several collieries in West Bengal and Bihar. One of the collieries is known as the South Samla Colliery. The South Samla colliery was under military occupation from 1942 and was released in 1955. During the period of military occupation the assessee incurred expenditure on account of minimum royalty payable in respect of the colliery, the surface rent and salaries for the watch and ward employees. The expenditure was allowed in income-tax proceedings as a business expenditure. After the colliery was released by the military, the assessee incurred a further expenditure amounting to Rs. 1,61,742 on the colliery with a view to resuming mining operations. The expenditure was incurred during the previous year beginning October 24, 1957 and ending November 11, 1958 relevant to the assessment year 1959-60. In the assessment proceedings for that assessment year the assessee claimed a deduction of the amount of Rs. 1,61,742 under s. 10(2) (xv) of the Indian Income Tax Act, but the deduction was disallowed by the Income-tax Officer on the ground that the expenditure was capital in nature. On appeal, the Appellate Assistant Commissioner affirmed that the expenditure was in the nature of capital expenditure. The assessee proceeded in second appeal, but the Income Tax Appellate Tribunal, without giving any reasons of its own, merely recorded its agreement with the income-tax authorities. The assessee obtained a reference to the High Court at Calcutta for its opinion on the following question:

"Whether on the facts and circumstances of the case, the Income-tax appellate Tribunal was justified in holding that the expenditure claimed on the South Samla Colliery at Rs. 1,61,742 was capital in nature."

The High Court noted the following facts:

The assessee carried on business in coal as the owner of various collieries. The South Samla Colliery, which was one of them, was occupied by the military from 1942 until it was derequisitioned in 1955. During that period the assessee did not, because he could not, work the colliery. He continued, however, carrying on his business in coal

and working other collieries during that period. While the South Samla Colliery remained under military occupation the assessee incurred expenditure on payment of surface rent and minimum royalty in respect of that colliery and also on account of salary for the watch and ward staff. The expenditure had been claimed and allowed as business expenditure of the assessee. After the colliery was handed over to the assessee upon derequisition, the assessee incurred, during the relevant period, an expenditure of Rs. 1,61,742 in renovating the building, reconditioning the machinery and clearing the land of debris accumulated over a number of years. The expenditure of Rs. 1,61,742 consisted of Rs. 66,937 spent on the staff and labour force by way of salaries, wages and other benefits and an amount of Rs. 94,805 spent on the purchase of various stores, machinery repairs, dhowrah repairs etc. This expenditure had to be incurred by the assessee for the purpose of putting the machinery in working order and bringing the colliery to a state where the mining operations could be resumed. The colliery had not started working and mining operations had not been resumed during the relevant year.

The High Court observed that the assessee was carrying on its business throughout and the circumstance that one of the collieries was not being worked did not affect the carrying on of that business. The business of the assessee, the High Court said, had to be considered as a whole and not on the basis of its different sources of supply or units of production. The High Court held that on the facts admitted and found it could not be said that any fresh asset had been acquired by the assessee by spending Rs. 1,61,742. The expenditure, it observed, was incurred by the assessee for the purpose of carrying on an existing concern and not for acquiring any concern not in existence. Ac-

cordingly, it held that the expenditure was in the nature of revenue expenditure and, therefore, answered the question in favour of the assessee.

In this appeal the first contention raised by the Revenue is that the High Court had no jurisdiction to re- appraise the facts and therefore its finding on the nature of the expenditure is vitiated. The contention is without substance. The facts on which the High Court has relied are admitted between the parties or are facts found by the income-tax authorities. We have no hesitation in rejecting the first contention.

The second contention is that the claim of the assessee must be considered with reference to s. 10(2)(v) and not s. 10(2)(xv) of the Act. It is urged that if s.10(2) (v) is the relevant clause, being the specific provision in respect of expenditure on current repairs to buildings and machinery, there is no justification for relying on s.10(2) (xv). S. 10(2) (xv) is a residuary clause, and deals with expenditure not being an allowance of the nature described in any of the preceding clauses of s.10(2). The submission is that where repairs are effected to buildings and machinery a deduction under s.10(2) is permissible only in respect of current repairs, and repairs which are not "current repairs" are not intended to be the subject of relief. The Act, it is

contended, limits the repairs to "current" repairs. The repairs made by the assessee, it is said, cannot be described as "current repairs" Now, this contention rests on the principle that if a special provision covers the case, resort cannot be had to a general provision. It seems to us that if the renovation of the building, the reconditioning of machinery and the removal of debris cannot be described as "current repairs" and we assume that to be so-the case would be entitled to consideration under s.10(2)(xv). Section 10(2)(v) deals with current repairs only. The subject matter of s.10(2) (v) is "current repairs" and it appears difficult to agree that repairs which are not "current repairs" should not be considered for deduction on general principles or under s.10(2) (xv). There must be very strong evidence that in the case of such repairs, the Legislature intended a departure from the principle that an expenditure, laid out or expended wholly and exclusively for the purposes of the business, and which expenditure is not capital in nature, should not be allowed in computing the income from business. There is nothing in the language of s.10(2) (v) which declares or necessarily implies that repairs, other than, current repairs, will not qualify for the benefit of that principle. We must remember that on accepted commercial practice and trading principles an item of business expenditure must be deducted in order to arrive at the true figure of profits and gains for tax purposes. The rule was held by the Privy Council in *C.I.T. v. Chitnis*(1) to be applicable in the case of losses, and it has been applied by the courts in India to business expenditure incurred by an assessee. *Motipur Sugar Factory Ltd. v. C.I.T., Bihar and Orissa*(2) and *Devi Films Ltd. v. C.I.T. Madras*(3). The principle found favour with this Court in *Badridas Daga v. C.I.T.*(4) and *Calcutta Co. Ltd. v. C.I.T. West Bengal*(5). the contents of that rule be true on general principle, there is good reason why the scope of s.10(2) (xv) should be construed liberally. In our opinion, even if the expenditure made by the assessee in the present case cannot be described as "current repairs", he is entitled to invoke the benefit of s. 10(2) (xv). We may mention that in *The Law Shipping Co. Ltd. v. Commissioners of Inland Revenue*(6) it has been held that accumulated arrears for repairs are none the less repairs necessary to earn profits, although they have been allowed to accumulate.

The question then is whether s. 10(2) (xv) is attracted. There can be little doubt that the expenditure incurred is incidental to the business of the assessee. It was involved in renovating the buildings, reconditioning the machinery and clearing the debris, from the land. All the work done was for the purpose of resuming the operation of the colliery. The expenditure was laid out wholly and exclusively for the purposes of the business. We do not think there can be any dispute as to that.

But the more serious question is whether the expenditure can be regarded as capital in nature, for if that be so the benefit of s. 10(2) (xv), on its plain terms, must be denied. Now, whether an expenditure can be described as capital or revenue falls to be decided by several tests, each one of which approaches the question from one perspective or another, conditioned by the particular facts of each case. We need not refer to all of them. On the facts of the present case, it seems sufficient to mention the

tests laid down by this Court in *Assam Bengal Cement Co. Ltd. v. C.I.T. West Bengal*(7). The business of the assessee in the present case was coal-mining, and it was carried on by the operation of a network of collieries. Each colliery was a unit of production. While the several units of production continued to be employed and the business continued to be carried on, one alone of the units, the South Samla Colliery was compelled to suspend production. The suspension was expected to be of temporary duration, because the property was merely requisitioned for military use, it was not acquired. As soon as the property was de-requisitioned, the assessee took measures to resume production of coal. It was necessary to remove the impediments which had come in the way by reason of the temporary suspension of work. The buildings were removed, the machinery reconditioned and the accumulated debris removed from the land. The colliery was, in a word, reinstated to the condition necessary for ensuring production. No new asset was brought into existence; no advantage for the enduring benefit of the business was acquired. An activity which was continuously in operation but had been temporarily suspended was to be resumed. It is immaterial that during the year under consideration there was no mining activity. That the colliery was regarded as an asset of a continuing business all along, even during the period of military occupation, is evidenced by the fact that expenditure incurred by the assessee during that period in respect of the colliery was allowed as a permissible deduction in its income tax assessments. The expenditure of Rs. 1,61,742 under consideration in the present case was also expenditure laid out as part of the process of profit earning. The nature of the expenditure is clearly revenue in character. The High Court is right in holding that the expenditure is not of a capital nature.

The appeal is dismissed with costs.

N.V.K.

Appeal dismissed.