

## **Commissioner Of Income-Tax, Calcutta vs Indian Oxygen Limited on 29 March, 1995**

**Equivalent citations: AIR1995SC1737, [1996]218ITR337(SC), AIR 1995 SUPREME COURT 1737, 1995 AIR SCW 2715, (1996) 134 CURTAXREP 372, (1996) 218 ITR 337, (1996) 132 TAXATION 340**

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**Bench: B.P. Jeevan Reddy**

### **JUDGMENT**

1. These appeals are preferred against the judgment of the Calcutta High Court answering the question referred to it in the affirmative, i.e., in favour of the Assessee and against the Revenue. The question referred was:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the sum of Rs. 2,97,480/- paid by the assessee to the British Oxygen Co. Ltd., London in pursuance of the agreement dated 1-10-1959 was a permissible deduction under Section 37(1) of the Income-Tax Act, 1961 ?

2. After examining the various clauses in the agreement between the Assessee and the British Oxygen Co. Ltd, the High Court found as follows:

The English Company did not sell any information, processes and inventions to the Indian Company. Under Clause 22 of the agreement the Indian Company is not entitled to use them after the termination of this agreement. The Indian Company is prohibited from disclosing those informations, processes and inventions during the currency and also after the determination of this agreement in view of its Clause 11. Though this agreement is for a period of ten years, it can be terminated earlier as provided in Clause 23. Therefore, it cannot be said that the Indian Company has incurred the expenditure for the purposes of bringing into existence any asset or advantage of an enduring nature. It must also be held that this expenditure is not a capital but a revenue expenditure, for it was incurred by the Indian Company for running its business on working it with a view to produce profits.

3. We are of the opinion that the said understanding of the agreement is correct. Once it is so, the amount paid by the Assessee to the British Company cannot be treated as capital expenditure. It is nothing but revenue expenditure and has been rightly held so by the High Court.

4. The appeals accordingly fail and are dismissed. No costs.