In Re: L.H. Sugar Factories And Oil Mills ... vs Unknown on 20 December, 1951

JUDGMENT

1. The assessee has a sugar factory and oil mill business, In Connection with its business the assessee owns buildings some of which are used as quarters for labourers. In the assessment year in question the assessee removed the old khaprails and seventeen quarters were re-roofed with concrete while thirty-four quarters were re-roofed with new khaprails. As regards re-roofing with concrete it was admitted that this was a capital expenditure and the assessee was not entitled to claim a deduction for it out of his income. With regard to the re-roofing of thirty-four quarters with new khaprails a point was raised that this was current repairs and was not capital expenditure. The question referred to us by the Tribunal is as follows:

> Whether in the circumstances of the case, the expenditure incurred in the replacement of the old roofs by using new khaprail in place of old ones is an item of capital expenditure or a revenue expenditure under Section 10 (2) (xv) of the Income-tax Act?

2. Clause (xv) of the said Act is as follows:

> Any expenditure not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purpose of such business, profession or vocation.

3. For the buildings owned by the assessee depreciation is allowed by the Department in accordance with Clause (vi) of Section 10 (2) of the Indian Income-tax Act and the Tribunal appears to have made a mistake in referring to Section 10 (2) (xv) instead of to Section 10(2) (v). Section 10 (2) (v) is as follows:

> In respect of current repairs of such buildings, machinery, plant or 'furniture, the amount paid on account thereof;

4. Learned Counsel has urged that during the war years the assessee was not able to carry on the annual repairs to the roof with the result that in the assessment year 1945-46 it became necessary to re-rool the thirty-four quarters and the repair must, therefore, be deemed to be current repairs of the buildings. Reliance is placed by learned Counsel on the decision of their Lordships of the Judicial Committee on Rhodesia Railways Ltd. v. Income Tax Collector, Bechunaland Protectorate [1933] 1 I.T.R. 227. That was a case where the assessee was a railway company and it owned extensive railway lines, 394 miles being situate in the Bechuanaland Protectorate. Out of these 394 miles of track in the Protectorate 74 miles were the subject of treatment in the year in question, 33 1/2 miles having new sleepers, new rails and new fasteners. As regards the rest, the old rails were relaid but new sleepers were put in, steel sleepers for 38 1/2 miles and wooden sleepers for 2 miles.

The question arose whether that was a capital expenditure, or a revenue expenditure, it being admitted that the repair to the track brought it back to its normal condition and the line was not capable of giving more service than the original line. Their Lordships held that the expenditure was not a capital expenditure and it is on this part of the decision that reliance is being placed and it is urged that the roofs of thirty-four quarters only were changed by new roofs and not of all the quarters nor were the quarters rebuilt from the foundation. The basis of their Lordships' decision in the case is given at page 232 where their Lordships said:

> The expenditure here in question was incurred in consequence of the rails having been worn out in earning the income of previous years on which tax had been paid without deduction in respect of such wear and represented the cost of restoring them to state in which they could continue to earn income. It did not result in the creation of any new asset; it was incurred to maintain the appellants' existing line in a state to earn revenue. The analogy of a wasting asset which appears to have affected the minds of the Special Court has really no application to such a case as the present. Nor do their Lordships agree that expenditure in order to form a permissible deduction must have been incurred in the production of the actual year's income which is the subject of the assessment, if by this it is meant that the benefit of the expenditure must not extend beyond the year of assessment, for very many repairs have the result of enabling income to be earned in future years as well as in the year in which they are effected.

5. Their Lordships laid stress on the fact that no allowance for depreciation was received by the appellants and dealing with that matter said that the assessee having been allowed deduction in the nature of repairs they were not intended to get a deduction in the name of depreciation in respect of the same permanent structure. Sri Das, on behalf of the Department, has placed before us the assessment order to show that such depreciation was allowed in this case but we need not take that fact into consideration as it is not mentioned in the statement of the case. The assessee was clearly entitled to depreciation under Clause (vi) of Section 10(2) and we presume he must have been allowed the depreciation permissible under that clause. In any case was or assessee, if he was not getting the normal depreciation, to have insisted on that fact being brought out in the statement of the case. The re-roofing of the thirty-four quarters with new tiles must have enhanced their value and added to the capital assets of the company. Depreciation is payable at different rates according to the nature of the building and in the case of khaprails depreciation is payable at a higher rate. After a certain number of years, therefore, the value of the property so depreciates that it becomes almost nil and if thereafter a large sum of money is spent in renovating the building or rebuilding the same the amount spent would naturally increase the capital assets of the company. Such repairs are different from current repairs and cannot come under Section 10(2)(v) of the Act.

6. It is not necessary for us to discuss in this case the difference between what is "capital expenditure" and what is " revenue expenditure". In a recent case, Jagat Bus Service, Saharanpur v. Commissioner of Income-tax, U.P. and Ajvier-Merwara , we have attempted to explain the difference, and in the case of Ramkishan Sunderlal v. Commissioner of Income-tax, U.P. [1951] 19 I.T.R. 324 at 328, we have discussed the question as to what are "current repairs". It is not necessary

for us to repeat what we have already said in the above two cases. In our view it cannot be said that the changing of the entire roof of the thirty-four quarters by substituting new roof with new khaprails was in the nature of current repairs. Even a khaprail (tiles) is expected to last for sometime and though it may need annual repairs yet the entire changing of the tiles by new ones is not necessary for a number of years. In the circumstances it cannot be said that the replacement of the old roofs by new roofs using new khaprails is a revenue expenditure, nor, can it be classed as current repairs.

7. The Department is entitled to its cost which we assess at Rs. 300.