Ramkishan Sunderlal vs Commissioner Of Income-Tax, U.P. on 5 December, 1950

Equivalent citations: [1951]19ITR324(ALL)

JUDGMENT

In this reference under Section 66(1) of the Indian Income-tax Act the Tribunal referred to us a number of questions and it will be convenient to take up each question separately.

The assessee is a registered firm and runs the New Kanpur Flour Mills. That the firm had extensive business will be evident from the fact that the turnover for the relevant accounting period, July 22, 1943, to June 22, 1944, was as much as Rs. BBHG 15,38,895.

In that year the assessee firm had to spend a sum of Rs. 1,554 in changing certain cables of the flour mill plant.

The first question referred to us is :-

> "Whether in the circumstances of the case, the expenditure of Rs. 1,554 on the change of cables of the flour mill plant could be said to be an expenditure over their repairs and as such allowable under Section 10(2) of the Act ?"

Section 10(2) of the Act gives a list of the expenses which have to be deducted when computing the profits and gains of the assessee, section 10(2)(v) provides for deduction of money spent in respect of current repairs to buildings, machinery, plant or furniture and the amount paid on account thereof.

The answer to the question will depend on the view whether the amount spent was in respect or "current repair" or not. In paragraph 6 of the statement of the case the Tribunal has purported to give the facts, but they do not really carry us any further. The Tribunal seem to draw a distinction between renewal and repair and seem to think that when a part is replaced it is not current repair, this view is clearly wrong. The parts that get constantly worn out and have to be frequently changed may be included in current expenditure. The answer would depend in each case upon the facts of that case. The facts that will have to be taken into consideration are the nature of the repairs, the amount of money spent on it and whether it was a replacement or repair of a part which gets constantly worn out and has to be changed frequently. As was pointed out by Buckley. L.J., in Lurcott v. Wakely & Wheeler :

> "Repair and renew are not words expressive of a clear contrast. Repair always involves renewal; renewal of a part; of a subordinate part, a skylight leaks; repair is effected by hacking out the putties, putting in new ones, and renewing the paint. A roof falls out of repair; the necessary work is to replace the decayed timbers by sound

> wood; to substitute sound tiles or stays for those which are cracked, broken or missing; to make good the flashings, and the like.
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> ..... Repair is restoration by renewal or replacement of subsidiary parts of a whole. Renewal, as distinguished from repair, is reconstruction of the entirety, meaning by the entirety not necessarily the whole but substantially the whole subject-matter under discussion."

In the Indian Income-tax Act the word "repair" is further qualified by the word "current" which would further restrict its meaning to petty repairs, usually carried out periodically and will not include repair or renewal costing a large sum of money which has to be spent after a machine has been run for number of years.

We have already said that no facts are set out in the statement of the case which are of any assistance, but we find from the order of the Income-tax Officer that the total value of the cables was Rs. 4,537 and the replacement cost Rs. 1,554. That means probably one third of the cables were replaced by new ones. The question whether the expenditure of Rs. 1,554 amounted to a "current repair" or not was primarily a question of fact and it should not have been referred to us, but since it has been referred we may say that, in our view, the amount could not be deducted under Section 10(2)(v) of the Act.

The third and fourth questions referred to us do not also raise any question of law. The third question is as follows :-

> "Whether in the circumstances of the case, when no entry of the manufactured stock existed in the account as against the expenditure over raw materials, a loss incurred in connection with the alleged manufacture shown in the account books was determinable and allowable in spite of such omission ?"

In the statement of the case it is mentioned that the Tribunal had held that the loss was not determinable as there was no stock register from which the stock of maize etc. In the beginning of the year and the stock at the end could be determined. Further, there was no entry of any stock of starch, either manufactured or in the process of manufacture, in the books of the company. The Tribunal had further found, on such material as was available to it, that the factory had not commenced manufacture in the accounting year and was only in a state of formation. In the circumstances, no such question as has been framed by the Tribunal arises, nor does the question raise any point of law.

Question No. 4 is divided into two parts, and is as follows :-

> "4(a) Whether in the circumstances of the case, starch factory could be held to have commenced working in the year of account or was only in a state of formation ?"

This question again does not raise any question of law, the Tribunal held that as there was no entry of manufacture of any starch in the accounting year in the books of the company it was satisfied that no starch had been manufactured in that year. This Court is not a court of appeal on a question of fact and the question, therefore, does not call for any answer.

> "Whether in the circumstances of the case, the loss in sulphur and the depreciation claimed by the applicant could legally be allowed as arising out of his business of manufacturing of starch ?"

On this point the Tribunal held that as no starch had been manufactured in the year of accounting there could be no question of any loss or depreciation in the course of manufacture of starch. This question also, therefore, does not raise a question of law and calls for no answer from us.

Question No. 2 is as follows :-

> "Whether in the circumstances of the case, the sum of Rs. 500 spent on boarding and lodging of partners in the course of tours under taken by them for business purposes is an allowable expenditure under Section 10(2) of the Act ?"

The only paragraph in the statement of the case which relates to this question is as follows :-

> "The Income-tax authorities found that the partners expenditure on such heads was personal to them and was not incurred for the purposes of the business, but for their own sustenance and comforts. The Tribunal endorsed the above view holding that only the place of expenditure was changed from partners residence to another station and that therefore the expenditure was disallowable as being an expenditure personal to the partner. The question is whether such an expenditure should be taken to have (been) incurred wholly and solely for the purpose of the business and is allowable as such."

The exemption is claimed under Section 10(2)(vii) which is as follows :-

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

It is difficult to see how the boarding and lodging expenses of a partner can be said to be "wholly and exclusively" for the purpose of such business. It is true that a partner going outstation in the interest of the business of the firm might have to spend more on his boarding, but he would have to spend something even if he remains at the head-quarters. Such expenditure has to be incurred to preserve life, and it is difficult to see how it can be said that the money was spent wholly and exclusively for the purpose of the business. Our answer to this question is, therefore, in the negative.

In the result, the revenue is entitle to its costs which we assess at Rs. 200.

Reference answered accordingly.