

Punjab State Industrial Development ... vs Commissioner Of Income Tax, Patiala on 4 December, 1996

Equivalent citations: [1997]225ITR792(SC), (1997)10SCC184, AIR ONLINE 1996 SC 766

Bench: A.M. Ahmadi, K. Ramaswamy, Sujata V. Manohar

ORDER

1. The question referred for decision reads as under:

Whether, in the facts and circumstances of the case, the Tribunal was right in law in holding that the amount of Rs. 1,50,000 paid to the Registrar of Companies, as filing fee for enhancement of capital was not revenue expenditure ?

2. Since there was a conflict of opinion on this point amongst the various High Courts, it was thought expedient by the Income-tax Appellate Tribunal, Chandigarh Bench, to directly refer the question for decision by this Court under Section 257 of the Income-tax Act, 1961, The factual background in which the question arises for determination is that the applicant, Messrs. Punjab State Industrial Development Corporation Ltd., filed the return of its total income declaring an income of Rs. 13,83,049 on June 30, 1979. In the profit and loss account an amount of Rs. 1,50,000 was claimed as revenue expenditure, the same having been paid to the Registrar of Companies as filing fee for enhancement of capital of the company. The Inspecting Assistant Commissioner of Income-tax (Assessment), Chandigarh, allowed the expenditure but the Commissioner of Income-tax, Patiala, in exercise of the power conferred on him under Section 263 of the Income-tax Act revised the order suo motu as in his view the expenditure of Rs. 1,50,000 was wrongly allowed as revenue expenditure. He, therefore, enhanced the income computed by the lower authority by the amount of Rs. 1,50,000 and directed that the assessment be revised accordingly. Feeling aggrieved by the said order, the assessee preferred an appeal before the Income-tax Appellate Tribunal. The Tribunal upheld the order of the Commissioner placing reliance on the judgment in (Iroz-Beckert. Sahoo Ltd. v. CIT [1986] 1Go ITR 743 of the Punjab and Haryana High Court. It was thereafter that a reference was sought under Section 256(1) of the Income-tax Act, but as stated above, in view of the conflict of opinion amongst the High Courts in the country the question has been directly referred to this Court for determination.

3. The issue has been answered in favour of the assessee and against the Revenue by the High Courts of Madras, Karnataka, Andhra Pradesh and Kerala in the following decisions : CIT v. Kisenchand Chellaram (India) P. Ltd. ; Warner Hindustan Limited v. CIT ; Hindustan Machine Tools Ltd. (No. 3) v. CAT and Federal Bank Ltd. v. CIT . The High Courts of Allahabad, Himachal Pradesh, Delhi, Calcutta, Bombay, Punjab, Gujarat, Andhra Pradesh and Rajasthan have held in favour of the Revenue in the following cases : 'CIT v. Modi Spinning and Weaving Mills Co. Ltd. ; Mohan Meakin Breweries Ltd. v. CIT (No. 2) [1979] 117 ITR 505 (HP); Bharat Carbon and Ribbon Mfg. Co, Ltd. v.

CIT ; Brooke Bond India Ltd. v. CIT ; Bombay Burmah Trading Corporation Ltd. v. CIT ; Groz-Bechert Sahoo Ltd. v. CIT ; Ahmedabad Mfg. and Calico Pvt. Ltd. v. CIT [1986] 162 ITR 800 (Guj); CIT v. Aditya Mills [1990] 181 ITR 195 (Raj) ; CIT v. Multi Metals Ltd. and Vazir Sultan Tobacco Co. Ltd. v. CIT . We may also state that the Calcutta High Court has affirmed this , earlier view in three subsequent decisions reported in Kesoram Industries and Cotton Mills Ltd. v. CIT ; Wood Craft Products Ltd. v. CIT and CIT v. Tungabhadra Industries Ltd. and so also the Gujarat High Court has affirmed its earlier view in Alembic Glass Industries Ltd. v. CIT .

4. We may also indicate that this Court laid down the test for determining whether a particular expenditure is revenue or capital expenditure in the case of Empire Jute Co. Ltd. v. CIT , In that decision, this Court surveyed the law on the subject in considerable detail and observed at page 10 as under:

The decided cases have, from time to time, evolved various tests for distinguishing between capital and revenue expenditure but no test is paramount or conclusive. There is no all embracing formula which can provide a ready solution to the problem ; no touchstone has been devised. Every case has to be decided on its own facts, keeping in mind the broad picture of the whole operation in respect of which the expenditure has been incurred. But a few tests formulated by the courts may be referred to as they might help to arrive at a correct decision of the controversy between the parties. One celebrated test is that laid down by Lord Cave L. C. in *Atherton v. British Insulated and Helsby Cables Ltd.* [1925] 10 TC 155, 192 (HL), where the learned Law Lord stated:

... when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital.

5. This test, as the parenthetical clause shows, must yield where there are special circumstances leading to a contrary conclusion. Briefly put, it is not a strait-jacket formula and the question will have to be determined in the backdrop of facts of each case. The test laid down can at best be a guide for determining whether a particular expenditure forms part of revenue expenditure or capital expenditure. The Madras High Court in *Kisevchand Chellaram (India) P. Ltd.*'s case was dealing with a case in which the assessee had paid fees for raising the capital of a company to the Registrar of Companies and had claimed the amount paid as a revenue expenditure. It was held that without capital a company cannot carry on its business and hence the expenses incurred for increasing the capital were bound up with the functioning and financing of the business. Therefore, the assessee's claim for deduction was allowed. The view taken was that since the amount was wholly and exclusively used for the purpose of the assessee's business it was allowable as a deduction under Section 37(1) of the Income-tax Act. The Karnataka High Court has followed the view taken by the Madras High Court and so also has the Kerala High Court taken the same view. After considering the test laid down by this Court in *Empire Jute Co.*'s case , the Kerala High Court observed as under

(see , 246):

We are of the view that the expenditure incurred for the enhancement of authorised capital is only for the purpose of bettering or improving an established business and cannot be said to be for the purpose of a new business. Viewed in a business sense, the enhancement of the authorised capital is only to broaden the capital base which will be conducive to the better conduct and efficiency and profitability of the business.

6. In this view the High Court held that the expenditure incurred by the assessee was an item of revenue expenditure. This line of reasoning has not found favour with the other High Courts which have taken a contrary view. The Calcutta High Court in Brooke Bond India Ltd.'s case held that where the object of incurring an expenditure is to affect the capital structure as a result of which certain incidental advantage flows, the expenditure will be of capital nature. It is not the acquisition of a right of a permanent character alone, the creation of which is a condition for the carrying on of the business, that could be rightly treated as an expenditure on the capital account. Capital expenditure can be incurred after a company is floated or it started business, if it resulted in bringing about capital advantage. The Andhra Pradesh High Court had in Warner Hindustan Ltd.'s case , following the decision of the Madras High Court in Kisenchand Chellaram's case held that the expenditure incurred was connected with functioning and financing of the assessee's business and hence the fees paid could not be treated as on capital account. However, this line of reasoning was departed from in the subsequent decision in Vazir Sultan Tobacco Co. Ltd.'s case , wherein it was observed that where the object of incurring an expenditure is to effect a capital structure as a result of which certain incidental advantage flows, the expenditure will be of capital nature. In other words, it followed the decision of the Calcutta High Court referred to earlier. It distinguished the earlier decision in Warner Hindustan Ltd.'s case holding that it was unable to appreciate the reasoning of the Madras High Court which held it to be a revenue expenditure. It, therefore, refused to extend the ratio of the decision in the earlier case of Warner Hindustan Ltd. to expenses incurred directly for the purpose. The Gujarat High Court in Ahmedabad Mfg. and Calico (P.) Ltd.'s case [1986] 162 ITR 800 held that the expenditure incurred being for an enduring benefit in the commercial sense could fall in the capital field. It was held that the shares issued by the company constituted its capital and being an integral part of the permanent structure of the company fell within the realm of capital expenditure. This view was reiterated in the subsequent case of Alembic Glass Industries Ltd. . The Bombay High Court in Bombay Burmah Trading Corporation Ltd.'s case , while dealing with the question whether the fees paid to the Registrar of Companies for enhancement of capital could be described as revenue expenditure or capital expenditure differed with a view taken by the Madras High Court and held that it runs counter to the decision of this Court in India Cements Ltd. v. CIT and In re : Tata Iron and Steel Co. Ltd. [1921] 1 ITC 125 (Bom), wherein it was expressly pointed out that the expenditure incurred for the issue of preference shares could not be said to be solely incurred for the purposes of the company's business. Briefly put it was held that it was an expenditure incurred directly for the purposes of expansion of the capital asset and was, therefore, of capital nature.

7. We do not consider it necessary to examine all the decisions in extenso because we are of the opinion that the fee paid to the Registrar for expansion of the capital base of the company was directly related to the capital expenditure incurred by the company and although incidentally that would certainly help in the business of the company and may also help in profit-making, it still retains the character of a capital expenditure since the expenditure was directly related to the expansion of the capital base of the company. We are, therefore, of the opinion that the view taken by the different High Courts in favour of the Revenue in this behalf is the preferable view as compared to the view based on the decision of the Madras High Court in Kisenchand Chellaram's case . We, therefore, answer the question raised for our determination in the affirmative, i.e., in favour of the Revenue and against the assessee.

8. The tax reference will stand answered accordingly with no order as to costs.