L. B. Sugar Factory & Oil Mills (P) Ltd. ... vs C.I.T. U.P., Lucknow on 26 August, 1980

Equivalent citations: 1981 AIR 395, 1981 SCR (1) 523, AIR 1981 SUPREME COURT 395, 1981 (1) SCC 44, 1980 TAX. L. R. 1468, (1981) 1 SCR 523 (SC), 1981 (1) SCR 523, (1980) 125 ITR 263, 1980 (19) CURTAXREP 185 (SC), (1980) 4 TAXATION 5, 1981 (1) ITJ 285, 1981 SCC (TAX) 19, 1981 UPTC 113, (1980) 4 TAXMAN 5 (SC), 59 TAXATION 139, (1981) 1 SCJ 281, (1980) 59 TAXATION 139, (1980) 125 ITR 293

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, A.P. Sen, E.S. Venkataramiah

PETITIONER:
L. B. SUGAR FACTORY & OIL MILLS (P) LTD. PILIBHIT

Vs.

RESPONDENT:
C.I.T. U.P., LUCKNOW

DATE OF JUDGMENT26/08/1980

BENCH:
BHAGWATI, P.N.
BENCH:
BHAGWATI, P.N.
SEN, A.P. (J)
VENKATARAMIAH, E.S. (J)

CITATION:
1981 AIR 395 1981 SCR (1) 523
1981 SCC (1) 44
CITATOR INFO :
RF 1987 SC 798 (11)

ACT:
Capital Expenditure and Revenue Expenditure, test of-Contribution made by the assessee towards the construction of dam and later on contributing 1/3rd cost towards the laying down of the road in the area around the factory under a Sugarcane Development Scheme, whether capital expenditure and hence deductible expenditure under s. 10(2)(xv) of the Indian Income Tax Act, 1922.

HEADNOTE:

The appellant, assessee is a private limited company carrying on business of manufacture and sale of crystal sugar in a factory situated in Pilibhit in the State of Uttar Pradesh. During the accounting year ending 30th September, 1955, the assessee contributed a sum of Rs. 22,332 towards the construction of Deoni dam-Majhala Road at the request of the Collector and a further sum of Rs. 50,000, being 1/3rd share of the cost of construction of roads in the area around its factory under a Sugar Cane Development Scheme, to the State of Uttar Pradesh. These two sums were claimed by the assessee as deductible expenditure under s. 10(2)(xv) of the Indian Income Tax Act, 1922 in its return for the assessment year 1956-57, but disallowed by the Income Tax Officer. Having lost in appeal before the Revenue Authorities and in reference before the High Court, the appellant came up in appeal by certificate.

Allowing the appeal in part, the Court

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HELD : (1) An expenditure incurred by an assessee can qualify for deduction under s. 10(2)(xv) of the Indian Income-tax Act, 1922 only if it is incurred wholly and exclusively for purpose of his business, but even if it fulfils this requirement, it is not enough, it must further be of revenue as distinct from capital expenditure. [526 C]

(2) The test laid down in Atherton's case for treating an item of expenditure as capital expenditure is not of universal application and it must yield where there are special circumstances leading to a contrary conclusion. If the advantage consists merely in facilitating the assessee's business operations or enabling the management and conduct of the assessee's business to be carried on more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. Further, in cases of this kind, where the question is whether a particular expenditure incurred by an assessee is on capital account or revenue account, the decision must ultimately depend on the facts of each case. No two cases are alike and quite often emphasis on one aspect or the other may tilt the balance in favour of capital expenditure or revenue expenditure. [527 F, 528 C, 530 C]

Commissioner of Taxes v. Nohanga Consolidated Copper Mines Ltd., [1965] 58 ITR 241; Empire Jute Co. Ltd. v. C.I.T. [1980] 3 SCR; applied.

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British Insulated and Helsby Cables Ltd. v. Atherton; 10 Tax Cases 155 p. 189; explained.

(3) In the instant case : (i) The amount of Rs. 22,332 was rightly disallowed as deductible expenditure under s. 10(2)(xv) of the Act. The amount was apparently contributed by the assessee without any legal obligation to do so purely

as an act of good citizenship and it could not be said to have been laid down wholly and exclusively for the purpose of the business of the assessee; and (ii) So far as the expenditure of the sum of Rs. 50,000 is concerned it was in the nature of revenue expenditure laid out wholly and exclusively for the purpose of the assessee's business and was, therefore, allowable as a deduction under s. 10(2)(xv) of the Act. [526 F, 531 A]

Lakshmiji Sugar Mills Co. P. Ltd. v. C.I.T.: 82 I.T.R. 736; Distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 298 of 1973.

From the Judgment and Order dated 28-7-1971 of the Allahabad High Court in Income Tax Ref. No. 335/66.

J. P. Goyal and S. K. Jain for the Appellant.

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

The Judgment of the Court was delivered by BHAGWATI, J.-The dispute in this appeal by certificate relates to two items of expenditure incurred by the assessee during the assessment year 1956-57 for which the relevant accounting year was the year ending on 30th September, 1955. The assessee is a private limited company carrying on business of manufacture and sale of crystal sugar in a factory situated in Pilibhit in the State of Uttar Pradesh. In the year 1952-53, a dam was constructed by the State of Uttar Pradesh at a place called Deoni and a road Deoni Dam- Majhala was constructed connecting the Deoni Dam with Majhala. It seems that the Collector requested the assessee to make some contribution towards the construction of the Deoni Dam and the Deoni Dam-Majhala Road and pursuant to this request of the Collector, the assessee contributed a sum of Rs. 22,332 during the accounting year ending 30th September, 1955. The assessee also contributed a sum of Rs. 50,000 to the State of Uttar Pradesh during the same accounting year towards meeting the cost of construction of roads in the area around its factory under a Sugarcane Development Scheme promoted by the Uttar Pradesh Government as part of the Second Five Year Plan. It was provided under the Sugarcane Development Scheme that one third of the cost of construction of roads would be met by the Central Government, one third by the State Government and the remaining one third by Sugar factories and sugarcane growers and it was under this scheme that the sum of Rs. 50,000 was contributed by the assessee. In the course of its assessment to Income-tax for the assessment year 1956-57, the assessee claimed to deduct these two amounts of Rs. 22,332 and Rs. 50,000 as deductible expenditure under Section 10(2)(xv) of the Indian Income-tax Act, 1922. The Income-tax Officer disallowed the claim for deduction on the ground that the expenditure incurred was of capital nature and was not allowable as a deduction under Section 10(2)(xv). The assessee preferred an appeal to the Appellate Assistant Commissioner but the appeal failed and this led to the filing of a further appeal before the Tribunal. The appeal was heard by a Bench of two members of the

Tribunal and there was a difference of opinion between them. The Judicial Member took the view that the expenditure of both the amounts of Rs. 22,332 and Rs. 50,000 was in the nature of revenue expenditure and was therefore allowable as a deduction, while the Accountant Member held that this expenditure was on capital account and could not be allowed as revenue expenditure. Since there was a difference of opinion between the two members, the question which formed the subject matter of difference was referred for consideration to a third member. The third member did not go into the question whether the expenditure incurred by the assessee was in the nature of capital or revenue expenditure but took a totally different line and held that the contributions were made by the assessee as a good citizen just as any other person would and it could not be said that the expenditure was laid out wholly and exclusively for the purpose of the business of the assessee. The third member in this view agreed with the conclusion reached by the Accountant Member and held that both the amounts of Rs. 22,332 and Rs. 50,000 were not allowable as deductible expenditure under Section 10(2)(xv). The appeal of the assessee was accordingly rejected by the Tribunal so far as this point was concerned. The assessee thereupon sought a reference to the High Court and on the application of the assessee, the following question of law was referred for the opinion of the High Court :

> "Whether on the facts and circumstances of the case the sums of Rs. 22,332 and Rs. 50,000 were admissible deduction in computing the taxable profits and gains of the companies business."

The High Court observed "that on the finding recorded by the third member of the Tribunal and on the view expressed by the Accountant Member". the expenditure could not be said to have been incurred by the assessee in the ordinary course of its business and it could not be "classified as revenue expenditure on the ground of commercial expediency". The view taken by the High Court was that since "the expenditure was not related to the business activity of the assessee as such, the Tribunal was justified in concluding that it was not wholly and exclusively laid out for the business and that the deduction claimed by the assessee therefore did not come within the ambit of Section 10(2)(xv)". The High Court accordingly answered the question referred to it in favour of the revenue and against the assessee. The assessee thereupon preferred to present appeal in this Court after obtaining the necessary certificate from the High Court.

Now an expenditure incurred by an assessee can qualify for deduction under Section 10(2)(xv) only if it is incurred wholly and exclusively for the purpose of his business, but even if it fulfils this requirement, it is not enough it must further be of revenue as distinct from capital nature. Two questions therefore arise for consideration in the present appeal : one is whether the sums of Rs. 22,332 and Rs. 50,000 contributed by the assessee represented expenditure incurred wholly and exclusively for the purposes of the business of the assessee and the other is whether this expenditure was in the nature of capital or revenue expenditure. So far the first item of expenditure of Rs. 22,332 is concerned, the case does not present any difficulty at all, because it was common ground between the parties that this amount was contributed by the assessee long after the Deoni Dam and the Deoni Dam-Majhala Road were constructed and there is absolutely nothing to show that the contribution of this amount had anything to do with the business of the assessee or that the construction of the Deoni Dam or the Deoni Dam-Majhala Road was in any way advantageous to the

assessee's business. The amount of Rs. 22,332 was apparently contributed by the assessee without any legal obligation to do so, purely as an act of good citizenship, and it could not be said to have been laid out wholly and exclusively for the purpose of the business of the assessee. The expenditure of the amount of Rs. 22,332 was therefore rightly disallowed as deductible expenditure under section 10(2)(xv).

But the position is different when we come to the second item of expenditure of Rs. 50,000. There the assessee is clearly on firmer ground. The amount of Rs. 50,000 was contributed by the assessee under the Sugar-cane Development Scheme towards meeting the cost of construction of roads in the area around the factory. Now there can be no doubt that the construction of roads in the area around the factory was considerably advantageous to the business of the assessee, because it facilitated the running of its motor vehicles for transportation of sugarcane so necessary for its manufacturing activity. It is not as if the amount of Rs. 50,000 was contributed by the assessee generally for the purpose of construction of roads in the State of Uttar Pradesh, but it was for the construction of roads in the area around the factory that the contribution was made and it cannot be disputed that if the roads are constructed around the factory area, they would facilitate the transport of sugarcane to the factory and the flow of manufactured sugar out of the factory. The construction of the roads was therefore clearly and indubitably connected with the business activity of the assessee and it is difficult to resist the conclusion that the amount of Rs. 50,000 contributed by the assessee towards meeting the cost of construction of the roads under the Sugarcane Development Scheme was laid out wholly and exclusively for the purpose of the business of the assessee. This conclusion was indeed not seriously disputed on behalf of the Revenue but the principal contention urged on its behalf was that the expenditure of the amount of Rs. 50,000 incurred by the assessee was in the nature of capital expenditure, since it was incurred for the purpose of bringing into existence an advantage for the enduring benefit of the assessee's business. The argument of the Revenue was that the newly constructed roads though not belonging to the assessee brought to the assessee an enduring advantage for the benefit of its business and the expenditure incurred by it was therefore in the nature of capital expenditure. The Revenue relied on the celebrated test laid down by Lord Cave L.C. in British Insulated and Helsby Cables Ltd. v. Atherson 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, 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". This test enunciated by Lord Cave L.C. is undoubtedly a well known test for distinguishing between capital and revenue expenditure, but it must be remembered that this test is not of universal application and, as the parenthetical clause shows, it must yield where there are special circumstances leading to a contrary conclusion. The non-universality of this test was emphasised by Lord Radcliffe in Commissioner of Taxes v. Nohanga Consolidated Copper Mines Ltd.(2) where the learned Law Lord said in his highly felicitous language that it would be misleading to suppose that in all cases securing a benefit for the business would be prima facie capital expenditure "so long as the benefit is not so transitory as to have to endurance at all". It was also pointed out by this Court in Empire Jute Co. Ltd. v.

C.I.T. that "there may be cases where expenditure, even if incurred for obtaining advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may

break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test." If the advantage consists merely in facilitating the assessee's business operations or enabling management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future.

Now it is clear on the facts of the present case that by spending the amount of Rs. 50,000, the assessee did not acquire any asset of an enduring nature. The roads which were constructed around the factory with the help of the amount of Rs. 50,000 contributed by the assessee belonged to the Government of Uttar Pradesh and not to the assessee. Moreover, it was only a part of the cost of construction of these roads that was contributed by the assessee, since under the Sugarcane Development Scheme, one third of the cost of construction was to be borne by the Central Government, one third by the State Government and only the remaining one third was to be divided between the sugarcane factories and sugarcane growers. These roads were undoubtedly advantageous to the business of the assessee as they facilitated the transport of sugarcane to the factory and the outflow of manufactured of sugar from the factory to the market centres. There can be no doubt that the construction of these roads facilitated the business operations of the assessee and enabled the management and conduct of the assessee's business to be carried on more efficiently and profitably. It is no doubt true that the advantage secured for the business of the assessee was of a long duration in as much as it would last so long as the roads continued to be in motorable condition, but it was not an advantage in the capital field, because no tangible or intangible asset was acquired by the assessee nor was there any addition to or expansion of the profit making apparatus of the assessee. The amount of Rs. 50,000 was contributed by the assessee for the purpose of facilitating the conduct of the business of the assessee and making it more efficient and profitable and it was clearly an expenditure on revenue account.

It was pointed out by Lord Radcliffe in commissioner of Taxes v. Nothanga Consolidated Copper Mines Ltd. (supra) that "in considering allocation of expenditure between the capital and income accounts, it is almost unavoidable to argue from analogy." There are always cases falling indisputably on one or the other side of the line and it is a familiar argument in tax courts that the case under review bears close analogy to a case falling on the right side of the line and must, therefore, decide in the same manner. If we apply this method, the case closest to the present one is that in Lakshmiji Sugar Mills Co. P. Ltd. v. C.I.T.(1) The facts of this case were very similar to the facts of the present case. The assessee in this case was also a limited company carrying on business of manufacture and sale of sugar in the State of Uttar Pradesh and it paid to the Cane Development Council certain amounts by way of contribution for the construction and development of roads between sugarcane producing centres and the sugar factory of the assessee and the question arose whether this expenditure was allowable as revenue expenditure under S. 10(2)(xv). No doubt, in this case, there was a statutory obligation under which the amount in question was contributed by the assessee, but this Court did not rest its decision on the circumstance that the expenditure was incurred under statutory obligation. This Court analysed the object and purpose of the expenditure

and its true nature and held that it was of a revenue and not capital nature. This Court observed : "In the present case, apart from the element of compulsion, the roads which were constructed and developed were not the property of the assessee nor is it the case of the revenue that the entire cost of development of those roads was defrayed by the assessee. It only made certain contribution for road development between the various cane producing centres and the mills. The apparent object and purpose was to facilitate the running of its motor vehicles or other means employed for transportation of sugarcane to the factory. From the business point of view and on a fair appreciation of the whole situation the assessee considered that the development of the roads in question could greatly facilitate the transportation of sugarcane. This was essential for the benefit of its business which was of manufacturing sugar in which the main raw material admittedly consisted of sugarcane. These facts would bring it within the second part of the principle mentioned before, namely, that the expenditure was incurred for running the business or working it with a view to produce the profits without the assessee getting any advantage of an enduring benefit to itself. (Emphasis supplied) These observations are directly applicable in the present case and we must hold on the analogy of this decision that the amount of Rs. 50,000 was contributed by the assessee "for running the business or working it with a view to produce the profits without the assessee getting any advantage of an enduring benefit to itself". This decision fully supports the view that the expenditure of the amount of Rs. 50,000 incurred by the assessee was on revenue account.

We must also refer to the decision of this Court in Travancore-Cochin Chemicals Ltd. v. C.I.T. (Supra) on which strong reliance was placed on behalf of the Revenue. The facts of this case are undoubtedly to some extent comparable with the facts of the present case. But ultimately in cases of this kind, where the question is whether a particular expenditure incurred by an assessee is on capital account or revenue account, the decision must ultimately depend on the facts of each case. No two cases are alike and quite often emphasis on one aspect or the other may tilt the balance in favour of capital expenditure or revenue expenditure. This Court in fact in the course of its judgment in Travancore- Cochin Chemicals Ltd.'s case (supra) distinguished the decision in Lakshmiji Sugar Mills' case (supra) on the ground that "on the facts of that case, this court was satisfied that the development of the roads was meant for facilitating the carrying on of the assessee's business. Lakshmiji Sugar Mills' case is quite different on facts from the one before us and must be confined to the peculiar facts of that case." We would make the same observation in regard to the decision in Travancore-Cochin Chemicals' case (supra) and say that decision must be confined to the peculiar facts of that case, because Lakshmiji Sugar Mills' case (supra) admittedly bears a closer analogy to the present case than the Travancore-Cochin Chemicals' case and if at all we apply the method of arguing by analogy, the decision in Lakshmiji Sugar Mills case (supra) must be regarded as affording us greater guidance in the decision in the present case then the decision in Travancore-Cochin Chemicals' case (supra). Moreover, we find that the parenthetical clause in the test formulated by Lord Cave L.C. in Antherton's case (supra) was not brought to the attention of this Court in Travancore-Cochin Chemicals' case with the result that this Court was persuaded to apply that test as if it were an absolute and universal test regardless of the question applicable in all cases irrespective whether the advantage secured for the business was in the capital field or not. We would therefore prefer to follow the decision in Lakshmiji Sugar Mills' case (Supra) and hold on the analogy of that decision that the amount of Rs. 50,000 contributed by the assessee represented expenditure on the revenue account.

We accordingly dismiss the appeal in so far as the expenditure of the sum of Rs. 22,332 is concerned. But, so far as the expenditure of the sum of Rs. 50,000 is concerned, we hold that it was in the nature of revenue expenditure laid out wholly and exclusively for the purpose of the assessee's business and was therefore, allowable as a deduction under Section 10(2)(xv) of the Act and allow the appeal to this limited extent. Since the assessee has partly won and partly lost, we think that the fair order of costs would be that each party should bear and pay its own costs throughout.

S.R. Appeal allowed in part.