Punjab-Haryana High Court
Commissioner Of Income-Tax vs Indian Woollen Textile Mills P. ... on 20 September, 1977
Author: P C Jain
Bench: P C Jain, G Singh
JUDGMENT Prem Chand Jain, J.

1. In compliance with the order of this court dated August 16, 1973, under Section 256(2) of the Income-tax Act, 1961, the following question has been referred by the Tribunal for our opinion :

"Whether, on the facts and in the circumstances of this case, the amount of Rs. 1,06,292 is in the nature of revenue or capital expenditure ?"

2. The assessee is a private limited company which carries on the business of the manufacture and sale of woollen cloth. In the accounting year ending on May 31, 1967, relevant to the assessment year 1968-69, the assessee-company incurred and claimed a total expenditure of Rs. 1,90,632 under the head "repairs and replacements". As a result of scrutiny of the details of the expenses in question, the Income-tax Officer found that a sum of Rs. 1,06,292 represented expenses incurred in connection with the conversion of 20 single shuttle semi-automatic looms into 2x1 shuttle box with automatic pirn changing motion with a view to have proper mixing of the weft yarn. The assessee had 36 Japanese made semi-automatic looms out of which 20 were converted into automatic ones. For this purpose, the assessee purchased cettain parts from Swiss manufacturers as they were not available with the Japanese manufacturers. This involved an expenditure of Rs. 1,06,292 which was claimed as revenue expenditure by the assessee. The Income-tax Officer, however, disallowed the aforesaid amount, vide his order dated July 28, 1969, on the ground that the expenses in question were of capital nature as this expenditure brought to the assessee benefit of enduring nature and resulted in the creation of new assets. The assessee preferred an appeal to the Appellate Assistant Commissioner of Income-tax on various grounds but did not succeed as its appeal was rejected on January 2, 1970. A further appeal was carried to the Income-tax Appellate Tribunal, Chandigarh, which was allowed by the Tribunal, vide its order dated May 26, 1971. The Tribunal held that the expenditure of Rs. 1,06,292 was a revenue expenditure being current repairs and replacements, incurred by the assessee in the day-to-day course of the carrying on of the business which was commercially expedient and demanded by the necessities of the business, and that the instant case was a case of replacement of the old parts with new ones and the replacements are allowable as the same were current repairs.

3. The short question that requires determination is whether the expenditure incurred by the assessee is an expenditure of a capital nature or a revenue expenditure ?

4. Mr. Awasthy, the learned counsel for the department, vehemently contended that by the conversion of 20 single shuttle semi-automatic looms into automatic ones, an entirely new asset had been brought into exist-ance. According to the learned counsel, the semi-automatic looms, and after conversion the automatic looms, were two different assets. In support of his contention, the learned counsel drew our attention to Rhodesia Railways Ltd. v. Income-tax Collector, Bechuanaland Protectorate [1933] 1 ITR 227 (PC), Humayun Properties Ltd. v. Commissioner of Income-tax [1962]

44 ITR 73 (Cal), Kanpur Agencies Private Ltd. v. Commissioner of Income-tax [1968] 70 ITR 337 (All) and Silver Screen Enterprises v. Commissioner of Income-tax [1972] 85 ITR 578 (Punj).

5. On the other hand, Mr. Gupta, learned counsel for the assessee, submitted that by incurring an expenditure on the conversion of 20 semiautomatic looms into automatic ones, a new asset was not being brought into existence, nor was there any question of obtaining a new or fresh advantage. In support of his contention, reliance was placed on various decisions but we are making reference only to some of them which are relevant for the decision of the controversy :

(1) New Shorrock Spinning and Manufacturing Co. Ltd. v. Commis-sioner of Income-tax [1956] 30 ITR 338 (Bom);

(2) Commissioner of Income-tax v. Mahalakshmi Textile Mills Ltd. [1967] 66 ITR 710 (SC);

(3) Commissioner of Income-tax v. Atherton West and Co. Ltd. [1971] 82 ITR 352 (All); and (4) Commissioner of Income-tax v. Kanodia Cold Storage [1975] 100 ITR 155 (All).

6. After considering the respective contentions of the learned counsel for the parties in the light of the decisions relied upon by them, we find that there is no merit in the contention of the learned counsel for the department.

7. As to what should be the test for finding out whether the expenditure which is claimed as an expenditure for repairs, has been incurred to preserve and maintain an already existing asset, or has been spent for the purpose of bringing into existence a new asset or obtaining a new advantage, Chagla C J. in New Shorrock Spinning and Manufacturing Co. Ltd.'s case [1956J 30 ITR 338 (Bom) has observed thus at page 343 :

"The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure for repairs what is really being done is to preserve and maintain an already existing asset. The object of the expenditure is not to bring a new asset into existence, nor is its object the obtaining of a new or fresh advantage. This can be the only definition of 'repairs' because it is only by reason of this definition of repairs that the expenditure is a revenue expenditure. If the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage, then obviously such an expenditure would not be an expenditure of a revenue nature but it would be a capital expenditure, and it is clear that the deduction which the legislature has permitted under Section 10(2)(v) is a deduction where the expenditure is a revenue expenditure and not a capital expenditure."

8. So far as the present case is concerned, the Tribunal while allowing the claim of the assessee, recorded the following findings of fact:

"(1) That the assessee effected replacement of the old parts with the new though the semi-automatic looms came to be converted into the automatic.

(2) That the said conversion of the looms did not improve the asset of the assessee.

(3) That the assessee had to undergo this expenditure because the spare parts of the Japanese machines were out of its reach, the Japanese factory having been destroyed in the Second World War and the manu-factufe of the said model of the said looms and the spare parts thereof having been stopped.

(4) That the labour saving incentive proved illusory and so was the automatic refixing of the thread.

(5) That the company incurred the expenditure and incurred it to continue to remain in business so that it could earn profits therefrom.

(6) That it was commercially expedient and urgently required by the needs of business as understood from the point of view of a prudent businessman."

9. Mr. Awasthy, learned counsel for the department, contended that having found that the assessee effected replacement of the old parts with the new, though the semi-automatic looms came to be converted into automatic, there was no warrant for the Tribunal to have held that the expenditure was a revenue expenditure, and that the other findings of fact were wholly irrelevant and of no consequence. We are afraid, we are unable to agree with this submission of the learned counsel. The findings of fact recorded by the Tribunal clearly lead to this conclusion that the expenditure being for current repairs and replacements was inclined by the assessee in the day-to-day course of the carrying on of the business which was commercially expedient and demanded by the necessities of the business. The decision of the Bombay High Court in New Shorrock Spinning and Manufacturing Co.'s case [1956], 30 ITR 338, on which reliance has been placed by the Tribunal, fully applies to the facts of the case in hand. The decisions in Mahalakshmi Textile Mills' case [1967] 66 ITR 710 (SC) and Kanodia Cold Storage's case [1975] 100 ITR 155 (All) also support the view put forth by Mr. Gupta, learned counsel on bahalf of the assessee. The judgments on which reliance has been placed by Mr. Awasthy are clearly distinguishable and have no applicability to the facts of the case in hand.

10. In this view of the matter, we are unable to find that the expenditure incurred by the assessee is an expenditure of a capital nature. Consequently, the question referred to us for our opinion is answered in the negative and against the department. The assessee shall have his costs from the department which are assessed at Rs. 250.