

Kerala High Court

Commissioner Of Income-Tax, ... vs Travancore Sugars And Chemicals ... on 20 August, 1963

Equivalent citations: 1964 51 ITR 24 Ker

JUDGMENT This is a reference by the Income-tax Appellate Tribunal, Madras Bench, under section 66 (1) of the Indian Income-tax Act, 1922. The assessment year concerned is 1958-59 and the accounting period, the twelve months ended April 30, 1957. The question referred is :

"Whether, on the facts and in the circumstances of the case, the payment of Rs. 42,480 by the assessee to the Travancore Government under the agreements dated June 18, 1937, and January 28, 1947, was allowable under section 10 of the Income-tax Act ?"

The assessee, the Travancore Sugars and Chemicals Limited, purchased from the Government of Travancore the assets of the Travancore Sugars Limited, of the Government Distillery at Nagercoil and of the Government Tincture Factory at Trivandrum. The agreement dated the 18th June, 1937, annexure "A" to the statement of the case, deals with this purchase. Apart from the cash consideration recited in the agreement, clause 7 thereof provided for a further payment as follows :

"The Government shall be entitled to twenty per cent of the net profits earned by the company in every year subject however to a maximum of rupees forty thousand per annum, such net profits for the purpose of this clause to be ascertained by deduction of expenditure from gross income and also after :

(1) provision has been made for depreciation at not less than the rates of allowances provided for in the income-tax law for the time being in force, and (2) payment of the secretaries and treasures remuneration."

Clause 7 of the agreement dated the 18th June, 1937, was replaced by a new clause by an agreement between the assessee and the Government of the Government of Travancore dated the 28th January, 1947. That agreement is given as annexure "B" to the statement of the case. The new clause 7 reads as follows :

"The Government shall be entitled to ten per centum of the net profits of the company in every year. For the purpose of this clause net profits means the amount for which the companys audited profits in any year are assessed to income-tax in the State of Travancore."

The preamble to the agreement dated the 28th January, 1947, makes it clear that the purchase was not merely for the cash consideration recited but also for the payment provided by clause 7. The relevant portion of the preamble is as follows :

"WHEREAS on the 18th June, 1937, an agreement (hereinafter called the principal agreement) was entered into between M. R. Ry. Rao Bahadur Rajyasevanirata N. Kunjan Pillai Avl., Chief Secretary to Government acting for and on behalf of the said Government of His Highness the Maharaja of Travancore of the one part, and Sir William Wright, Kt., C. G. E., of Messrs. Parry & Co. Ltd., Madras, acting for and on behalf of the said Messrs. Parry & Co. Ltd., of the other part, whereby the

said Government should sell and the company should purchase the assets including the lands of the Travancore Sugars Ltd., with the building, outhouses, machinery and other things attached thereto and more particularly described in the Schedule A annexed to the said principal agreement, the factory known as the Government Distilleries situate at Nagercoil in South Travancore with lands, buildings, machinery and other things attached thereto and more particularly described in the Schedule B annexed to the principal agreement and all the assets of the factory known as the Government Tincture Factory situated at Trivandrum and more particularly described in the Schedule C annexed to the principal agreement for the cash consideration in the said principal agreement mentioned and also in consideration inter alia that the said Government should be entitled to 20% (twenty per cent.) of the net profits earned by the company in every year subject however to a maximum Rs. 40,000 per annum, such net profits for purposes of the said agreement to be ascertained after the deductions set out in clause 7 of the said agreement." The underlining is ours.

It is clear from the above extract that the payment under clause 7 is part of the purchase price and if such is the case, the amounts paid in pursuance of that clause will constitute an expenditure not of a revenue but of a capital nature. In other words they were spent not for the purpose of carrying on the concern but for the purpose of acquiring it.

In other that an item of expenditure may be deductible under section 10 (2) (xv) of the Indian Income-tax Act, 1922, it should not be in the nature of a capital expenditure. It follows that the question referred has to be answered in the negative and against the assessee. We do so; but without any order as to costs.

The wording of the new clause 7 is significant. The ten per cent. payable is of the "net profits" of the year and the "net profits" is defined as "the amount for which the companys audited profits in any year are assessed to income-tax in the State of Travancore." This apparently shows that the ten per cent. payable was not intended to have any impact on the assessment to income-tax.

According to the department the payment under clause 7 will represent only a division of the earned profits of a common adventure between the assessee and the Government; and the payment will not hence constitute an admissible deduction. In the view we have taken it is unnecessary to evaluate this contention or consider cases like *British Sugar Manufactures Ltd. v. Harris (Inspector of Taxes)*.

A copy of this judgment under the seal of the High Court and the signature of the Registrar will be forwarded to the Appellate Tribunal as required by sub-section (5) of section 66 of the Indian Income-tax Act, 1922.