Supreme Court of India
M/S. Ballimal Naval Kishore & Anr vs Commissioner Of Income Tax on 10 January, 1997
Author: B J Reddy.J.
Bench: B.P. Jeevan Reddy, K.T. Thomas

PETITIONER:
M/S. BALLIMAL NAVAL KISHORE & ANR.

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX

DATE OF JUDGMENT: 10/01/1997

BENCH:
B.P. JEEVAN REDDY, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T B.P. JEEVAN REDDY.J.

Section 10(2)(v) of the Income Tax Act, 1922 allows deduction of the amount spent on "current repairs" to buildings, machinery, plant, furniture employed in the business. The assessee-appellant carries on the business of exhibiting films in a theatre called "Naval Talkies" at Panipat. He had purchased the said building in 1937. It was a ginning factory then. He ran the factory till 1940. In the year 1945, he converted it into a cinema theatre and was exhibiting films therein. During the period 1960 to March 1961, the assessee extensively repaired the theatre by expending substantial amounts. The amounts spent by him are: on machinery Rs.16,002/-, new furniture Rs.27,889/- sanitary fittings Rs.5,225/- and replacement of electrical wiring Rs.13,604/-. In addition thereto, a total amount of Rs.62,977/- was spent on extensive repairs to walls, to the hall, to the flooring and roofing, to doors and windows and to the stage sides etc. Actually the theatre had to be closed during the aforesaid period for effecting the repairs.

In the assessment proceedings relating to the relevant assessment year, the assessee claimed deduction of the aforesaid amount of Rs.62,977/-. The Income Tax Office disallowed the same. According to him it was capital expenditure. On Appeal, Appellate Assistant Commissioner affirmed the view taken by the Income tax Officer. On further appeal, however, the Tribunal upheld the

assessee's case whereupon the following question was referred to the Bombay High Court under Section 66(1) of the Indian Income Tax Act, 1922, at the instance of the Revenue: "Whether on the facts and circumstances of the case, in computing the Income of the assessee for the material year a sum of Rs.62977/- or any portion thereof is deductible?" The High Court answered the question in favour of the Revenue and against the assessee following the earlier decision of the said court in New Shorrock Spinning and Manufacturing Company Ltd. vs Commissioner of Income Tax [30 I.T.R.338].

The expression used in Section 10(2)(v) is "current repairs" and not mere "repairs". The same expression occurs in Section 30(a)(ii) and in Section 31(i) of the Income Tax Act, 1961. The question is what is the meaning of the expression in the context of Section 10(2). In New Shorrock Spinning and Manufacturing Company Ltd., Chagla,C.J., speaking for the Division Bench, observed that the expression "current repairs" means expenditure on buildings, machinery, plant or furniture which is not for the purpose of renewal or restoration but which is only for the purpose of preserving or maintaining an already existing asset and which does not bring a new asset into existence or does not give to the assessee a new or different advantage. The learned Chief Justice observed that they are such repairs as are attended to as and when need arises and that the question when a building, machinery etc. requires repairs and when the need arises must be decided not by any academic or theoretical test but by the test of commercial expediency. The Learned Chief Justice observed:

> "The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure or 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.
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> 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."

In taking the above view, the Bombay High Court dissented from the view taken by the Allahabad High Court in Ramkrishan Sunderlal vs. Commissioner of Income Tax, U.P. [(1951) 19 I.T.R..324] where it was held that the expression "current repairs" in Section 10(2)(v) was restricted to petty repairs only which are carried out periodically. The Learned Judge agreed with the view taken by the Patna High Court in Commissioner of Income Tax vs. Darbhanga Sugar Co. Ltd. [(1956) 29 I.T.T.21] and by the Madras High Court in Commissioner of Income Tax vs. Sri Rama Sugar Mills Ltd. [(1951) 21 I.T.R.191] In Liberty Cinema vs. Commissioner of Income-Tax, Calcutta [52 I.T.R.153], P.B. Mukharji, J., speaking for a Division Bench of the Calcutta High Court, held that an expenditure incurred with a view to bring into existence a new asset or an advantage of enduring nature cannot qualify for deduction under Section 10(2)(v).

In our opinion the test involved by Chagla C.J. in New shorrock Spinning & Manufacturing Company Limited is the most appropriate one having regard to the context in which the said expression occurs. It has also been followed by a majority of the High Courts in India. We respectfully accept and adopt the test.

Applying he aforesaid test, if we look at the facts of this case, it will be evident that what the assessee did was not mere repairs but a total renovation of the theatre. New machinery, new furniture, new sanitary fittings and new electrical wiring were installed besides extensively repairing the structure of the building. By no stretch of imagination, can it be said that the said repairs qualify as "current repairs" within the meaning of Section 10(2)(v). It was a case of total renovation and has rightly been held by the High Court to be capital in nature. Indeed, the finding of the high Court is that as against the sum of Rs.17,000/- for which the assessee had purchased the factory in 1937, the expenditure incurred in the relevant accounting year was in the region of Rs.1,20,000/-.

The appeal accordingly fails and is dismissed. No Costs