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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.23 of 2004

The Commissioner of Income Tax
Chennai. .. Appellant

versus

Chemicals &Plastics India Ltd.
Chennai. .. Respondent

PRAYER: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'B' Bench, dated 31.7.2002 in I.T.A.No.168/Mds/1994 against the order of the Commissioner fo Income tAx (Appeals I) Madras -34 dated 2.11.93 in IT/appeal No. 30/92-93 against the assessment order of the Assistant Commissioner of Income Tax Cent.Cir-II(3) Madras 34, dated 26.3.1992 in PAN/GIR.No. 47-003-CY0450

For appellant : Mr.J.Naresh Kumar
for M/s Pusya Sitaraman
Standing Counsel for Income Tax
For respondent : Mr.Venkatnarayanan
for M/s.Subbaraya Iyer

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The following two questions of law arise for consideration in this appeal preferred by the Revenue, relating to the assessment year 1988-89:

(i) Whether in the facts and the circumstances of the case, the Tribunal was right in holding that the amount of Rs.1.5 lakhs paid towards the construction of building of the Madras Chamber of Commerce is allowable as a business expenditure?

(ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the premium payable on redemption of debentures in future years is to be spread over and part of it

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allowed as a deduction in this year?

2. The assessee filed its return for the assessment year 1988-89 claiming deduction to the tune of a sum of Rs. 1.5 Lakhs being contribution to the Madras Chamber of Commerce as business expenditure, it being a member. The assessee contended that the maintenance of the Trade Chamber was for the furtherance of the business interest of the constituents of the Chamber; hence, the payment had to be treated as a business expenditure as per the decision reported in 186 ITR 276 (CIT Vs. T.V.SUNDARAM IYENGAR AND SONS). The assessing authority rejected this plea, taking the view that the payment to the building fund was only a gratuitous payment and that at best, it could only be equated to donation; hence, the same could not be considered as one incurred wholly and extensively for the purpose of the assessee's business. The Assessing Officer rejected the claim under Section 37 of the Act.

3. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals). Agreeing with the assessee's contention placing reliance on the decision reported in 186 ITR 276 (CIT Vs. T.V.SUNDARAM IYENGAR AND SONS), the appellate authority held that there might not be a direct nexus; yet as a member of the Chamber, the appellant was justified in contributing the sum towards the building fund and hence, the deduction could be claimed under Section 37(1). Thus, the first appellate authority allowed the appeal.

4. On further appeal by the Revenue before the Tribunal, the orders of the Commissioner of Income Tax was upheld. It took the view that the Chamber of Commerce was a body which brought together all the industries under one roof to represent before the Government. Hence, contribution towards the building fund would enable the chamber to function comfortably in its own building, thus serving the interests of the various members, like the assessee.

5. The Revenue is on appeal before this Court, contending that the Chamber of Commerce renders assistance to all the members and not in any particular manner to any member, like this assessee, so as to consider the expenditure as directly connected with the assessee's business. The Revenue contended that even if it is considered that the Chamber's business are so interwoven with the assessee's activities, it could only be in the nature of a capital expenditure and hence, in any event, not an expenditure to be allowed as a business expenditure.

6. The question whether a particular expenditure is a revenue expenditure or a capital expenditure is a vexed question. The line of demarcation is often found to be a very thin one and each case has to be decided on the facts and circumstances. In fact the trend of judicial decisions show a progressive liberal view on the concepts to treat many an item as revenue expenditure with regard to which a contrary conclusion could have been reached. Hidayathullah,J., in the decision reported in 44 ITR 689 (K.T.M.T.M. ABDUL KAYOOM AND ANOTHER Vs. COMMISSIONER OF INCOME-TAX) held that each case depends on its own facts and close similarity between one case and another is not enough, even a

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significant detail may alter the entire aspect. Hidayatullah J, in the said decision, also observed as follows:

> "... What is decisive is the nature of business, the nature of the expenditure, the nature of the right acquired, and their relation inter se, and this is the only key to resolve the issue in the light of the general principles, which are followed in such cases."

7. In the case reported in 72 ITR 143 (ASHOK LEYLAND LTD. Vs. COMMISSIONER OF INCOME-TAX, MADRAS) which was affirmed by the Supreme Court in 86 TR 549 (COMMISSIONER OF INCOME-TAX, MADRAS Vs. ASHOK LEYLAND LTD.), explaining the position of law, this Court stated as follows:

> "The facts of each case, the attending circumstances revolving round the expenditure, the aim, object and purpose of the same, their impact on the assessee, particularly in matters relating to the future of the assessee's trade and business, whether it could be sustained on ordinary canons of commercial expediency simpliciter, whether it is a step in aid of future expansion or prolongation of life of an existing business, whether it is to secure an enduring benefit, whether the expenditure constitutes conceivable nucleus to form the foundation for the posterior profit earning, whether the expenditure could be viewed as an integral part of the conduct of the business and to avoid the in-roads and incursions into its concrete present and potential future, are all some of the main instances which have a bearing on the decision, whether in a given case, the expenditure is capital or chargeable to Revenue. On the whole, an objective application of the judicial mind to the facts of each case is necessary."

8. The approach, hence, needs to be that of a practical and prudent businessman rather than from the Revenue's strict classification of a right. As the Supreme Court held in the decision reported in 223 ITR 101 (SRI VENKATA SATYANARAYANA RICE MILL CONTRACTORS CO. Vs. CIT), what is to be seen is not whether a payment was compulsory for the assessee to make or not. The correct test is that of a commercial expediency. The Apex Court held that considering the various decisions held that any contribution made by the assessee to a fund which is directly connected or related the carrying on of the assessee's business or which results in benefit to the assessee's business, has to be regarded as a deduction allowable under Section 37 of the Income Tax Act, 1961. Although the case related to a contribution to a public welfare fund, the ratio decidendi will guide the decision in this case too.

9. In may be noted that the decision reported in 266 ITR 170 (CIT Vs. MADRAS REFINERIES LTD.), while considering a claim of the

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expenditure incurred by an assessee providing drinking water facility as well as establishing or improving the school meant for the residents in the locality, a Division Bench of this Court, held that the amount spent could not be regarded as being wholly outside the ambit of the business concerns of the assessee. The Division Bench held as follows:

> "The concept of business was not static. It has evolved over a period of time to include within its fold the concrete expression of care and concern for the society at large and the people of the locality in which the business is located, in particular. Being known as a good corporate citizen brings goodwill of the local community, as also with the regulatory agencies and the society at large, thereby creating an atmosphere in which the business can succeed in a greater measure with the aid of such goodwill."

10. The facts in this case before us stand on a stronger footing, since the contribution made by the company is for the Chamber of Commerce whose activities are closely linked with the welfare of the Corporate entities who are members therein and whose interest are taken care of by the Chamber of Commerce, irrespective of whether the expense incurred is compulsory or otherwise. Hence, considering the fact that the payment is made for the purpose of the business, it satisfies the commercial expediency test to accept the case of the assessee. In the circumstances, we do not find any justification to accept the case of the Revenue that the Provisions of Section 37 have to be viewed in a very strict manner. It may be noted that Section 37 itself is concerned with 'an expenditure laid at or extended wholly or exclusively for the purpose of business or profession' to qualify for deduction. With the necessity no longer a valid test, we reject the Revenue's appeal.

11. In the circumstances, the first question is answered against the Revenue. As regards the second question, whether the premium payable on redemption of debentures in future years is to be spread over and part of it allowed as a deduction in this year, the same is covered by the decision of this Court reported in 204 CTR 115 (CIT Vs. FIRST LEASING CO. OF INDIA LTD.), to which one of us were a party (P.D. DINAKARAN, J), and is therefore answered against the Revenue.

12. Hence, both the questions are answered against the Revenue and the appeal is dismissed. Thereby, we confirm the order of the Tribunal and dismiss the Tax Case. There will be no order as to costs.

ksv

Sd/
Asst. Registrar

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Sub Asst.Registrar

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To:

1. THE COMMISSIONER OF INCOME TAX
CHENNAI

2. THE COMMISSIONER OF INCOME TAX
(APPEALS I) MADRAS 34

3. THE ASSISTANT COMMISSIONER
OF INCOME TAX, CENT-CIR.II(3) MADRAS.34

4. THE SECRETARY
CENTRAL BOARD OF DIRECT TAXES, NEW DELHI

5. THE ASSISTANT REGISTRAR
INCOME TAX APPELLATE TRIBUNAL, BENCH B,
RAJAJI BHAVAN 3RD FLOOR, BESANT NAGAR,
MADRAS.

+ One cc to M/s Pusya Sitaraman Advocate SR 11541

TS (co)

sg 23/3/07 Tax Case (Appeal) No.23 of 2004

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