

TRAVANCORE COCHIN CHEMICALS LIMITED

v.

COMMISSIONER OF INCOME-TAX, KERALA

January 21, 1977

[H. R. KHANNA, R. S. SARKARIA AND A. C. GUPTA, JJ.]

The Income-Tax Act, 1961, s. 37(1), whether construction of road a permissible deduction under.

The appellant assessee is a public limited company who spent Rs. 26,100/- for the construction of a new road for improving transport facilities in the area where its factory is located and sought to deduct this amount from its total income claiming this as revenue expenditure for the year. The claim was disallowed by the Income-tax Officer and the Appellate Assistant Commissioner. The Appellate Tribunal held that the amount could be deducted as revenue expenditure but at the instance of the respondent referred the matter to the High Court under s. 256(1) of the Income Tax Act, 1961, where it was decided against the appellant.

Dismissing the appeal, the Court,

HELD : The line of demarcation between capital expenditure and revenue expenditure has been found to be very thin. According to the test suggested in *Atherton's* case by Viscount Cave, L. C. by having the new road constructed for the improvement of transport facilities, the assessee acquired an enduring advantage for its business. The expenditure incurred was, therefore, of a capital nature. 1716 F. 717 F-H & 718 D]

Atherton v. British Insulated and Helsby Cables Ltd. [1925] 10 Tax Cases 155 : *Assam Bengal Cement Co. Ltd. v. Commissioner of Income Tax, West Bengal* [1955] 27 ITR 34 and *Sitalpur Sugar Works Ltd. v. Commissioner of Income Tax, Bihar and Orissa* [1963] 49 ITR 160, applied

Commissioner of Income-tax v. Hindustan Motors Ltd. [1968] 68 ITR 301 and *Lakshmiji Sugar Mills Co. (P) Ltd. v. Commissioner of Income-tax, New Delhi* [1971] 82 ITR 376, distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 265 of 1972.

From the Judgment and Order dated the 24th August, 1971 of the Kerala High Court in I.T.R.No. 25 of 1969.

G. B. Pai, K. J. John for M/s Dadabhanji & Co., for the Appellant.

B. B. Ahuja and R. N. Sachthey for Respondent.

The Judgment of the Court was delivered by

GUPTA, J.—The question for decision in this case is whether the money contributed by the assessee, public limited company, for the construction of a new road in the area where its factory is located to improve transport facilities is capital expenditure or revenue expenditure. The assessment year in question is 1964-65, the relevant accounting period being the financial year ended March 31, 1964. The assessee company is engaged in the manufacture of chemicals; it had been receiving and despatching materials required for and produced in its factory through lorries. The assessee along with three

A other public undertaking approached the Government of Kerala for laying a new road from Kalamasseri to Udayamandal; this area where the assessee's factory is situated was not at the material time served by pucca roads. It was agreed that the Government of Kerala would bear the cost of the acquisition of the land and 25 per cent of the cost of construction. The total cost to be shared by the four companies was Rs. 1,04,550/- and the assessee's share came to Rs. 26,100/-. The assessee company sought to deduct this amount from its total income claiming this as revenue expenditure for the year in question. The Income-tax Officer disallowed the claim holding that the assessee's contribution was capital expenditure. The Appellate Assistant Commissioner took the same view. The Appellate Tribunal, mainly relying on the decision of the Calcutta High Court in *Commissioner of Income-tax v. Hindustan Motors Limited*,⁽¹⁾ held that the assessee was entitled to deduct the amount as revenue expenditure. At the instance of the Commissioner of Income-tax, Kerala, Ernakulam, the Tribunal referred the following question to the High Court of Kerala under section 256(1) of the Income-Tax Act, 1961 :

D "Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was legally justified in allowing the expenditure of Rs. 26,100/- being the respondent's contribution to government for constructing a road as a permissible deduction under section 37(1) of the Income-Tax Act, 1961."

E The High Court held that the assessee in this case obtained an advantage of an enduring nature by the construction of the road and, therefore, the amount contributed was capital expenditure. The High Court accordingly answered the question in negative and against the assessee. In this appeal, brought on a certificate under section 261 of the Income-Tax Act, 1961, the assessee challenges the correctness of the answer given by the High Court to the question.

F The authorities both in this country and in England have pointed out the difficulties in formulating precise rules for distinguishing capital expenditure from revenue expenditure. The line of demarcation has been found to be very thin. Certain broad tests have however been laid down, and of them the test suggested by Viscount Cave, L. C., in *Atherton v. British Insulated and Helsby Cables Limited*⁽²⁾ appears to have been largely accepted in this country. The Court in *Assam Bengal Cement Company Limited v. Commissioner of Income-tax, West Bengal*⁽³⁾; *Sitalpur Sugar Works Limited v. Commissioner of Income-tax, Bihar and Orissa*⁽⁴⁾ and a number of other decisions has adopted the test as laid down in *Atherton's* case: to refer again to these often quoted lines from Viscount Cave's Judgment :
H "when an expenditure is made, ... with a view to bringing into existence an asset or an advantage for the enduring benefit of a

(1) (1968) 68 I.T.R. 301.

(2) (1925) 10 Tax Cases 155.

(3) (1955) 27 I.T.R. 34.

(4) (1963) 49 I.T.R. 160 .

trade, I think that 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". Referring to Atherton's case and certain other authorities on the distinction between capital expenditure and revenue expenditure and the tests to be applied, this Court in *Assam Bengal Cement Company Limited v. Commissioner of Income-tax*⁽¹⁾ observed :

"If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly attributable to capital and is of the nature of capital expenditure. If on the other hand it is made not for the purpose of bringing into existence any such asset or advantage but for running the business or working it with a view to produce the profits it is a revenue expenditure. If any such asset or advantage for the enduring benefit of the business is thus acquired or brought into existence it would be immaterial whether the source of the payment was the capital of the income of the concern or whether the payment was made once and for all or was made periodically. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. The source or the manner of the payment would then be of no consequence. It is only in those cases where this test is of no avail that one may go to the test of fixed or circulating capital and consider whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital. If it was part of the fixed capital of the business it would be of the nature of capital expenditure and if it was part of its circulating capital it would be of the nature of revenue expenditure."

In the case before us, the High Court applied viscount Cave's test and found that the expenditure made by the assessee brought into existence an advantage for the enduring benefit of the assessee's trade and accordingly held that this was capital expenditure.

Each case turns on its own facts. It is not disputed here that the correct test has been applied. Did the money spent by the assessee on construction of the new road secure for it an enduring benefit, or was it necessary for running its business? On the facts of the case the position seems to us clear enough not to merit an elaborate consideration, that by having the new road constructed for the improvement of transport facilities, the assessee acquired an enduring advantage for its business. The High Court rightly pointed out that the decision of the Calcutta High Court in *Commissioner of Income-tax v. Hindustan Motors Ltd.*⁽²⁾ on which the appellate tribunal relied, is clearly distinguishable on facts; that was a case where the expenditure incurred was for repair of an existing road which is different from the case where a new road is laid out for the purpose of the assessee's

(1) (1955) 27 I.T.R. 34.

(2) (1968) 68 I.T.R. 301.

- A** business. Mr. Pai, learned counsel for the appellant, has relied on the decision of this Court in *Lakshmiiji Sugar Mills Company Private Limited v. Commissioner of Incometax, New Delhi*⁽¹⁾, to contend that even the expenditure on the construction of roads could be revenue expenditure and not expenditure of a capital nature. In *Lakshmiiji Sugar Mills* case the assessee was a private limited company carrying on the business of manufacture and sale of sugar. Under the provisions of the U. P. Sugarcane Regulation of Supply and Purchase Act, 1953, the assessee company was obliged to contribute certain amounts for the development of roads which were originally the property of the government and remained so even after the improvement had been made.
- B**

- C** Apart from the fact that in this case the expenditure incurred was under a statutory compulsion, there was no finding that the roads were newly made. 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. *Lakshmiiji Sugar Mills*⁽¹⁾ case is quite different on facts from the one before us and must be confined to the peculiar facts of that case. On the facts of the instant case, we have no doubt that the expenditure incurred by the assessee was of a capital nature. The appeal accordingly fails and is dismissed but in the circumstances of the case without any order as to costs.
- D**

M. R.

Appeal dismissed

(1) (1971) 82 I.T.R. 376.