M/s. Sitalpur Sugar Works Ltd.

Vs

Commissioner of Income-Tax, Bihar and Orissa

Civil Appeal No. 350 of 1962

(S. K. Das, A. K. Sarkar, M. Hidayatullah JJ)

10.04.1963

JUDGMENT

SARKAR, J. –

This case does not seem to us to present any real difficulty. It arises out of a reference to the High Court of Patna of two questions both of which were answered by the High Court against the assessee, the appellant in this Court.

The appellant is a company manufacturing sugar. It had its factory originally at a place called Sitalpur. That place was found to be disadvantageous for the appellant's business as sugar cane of good quality was not available in sufficient quantity in the neighbourhood and also as it suffered from ravages of flood. With a view to improve its business the appellant removed its factory from Sitalpur to another place called Garaul and in the process of dismantling the building and machinery, transportation from Sitalpur to Garaul and refitting the machinery at the latter place, it incurred a total expenses of Rs. 3,19,766/- in the year of account. In the assessment of its income-tax it claimed a deduction of these expenses as revenue expenses. That claim was rejected. The questions referred concern these expenses.

The first question was this :

> "Whether the expenditure of Rs. 3,19,766/- incurred by the assessee in dismantling and shifting the factory from Sitalpur and erecting the factory and fitting the machinery at Garaul was expenditure of a capital nature and not revenue expenditure within the meaning of section 10(2)(xv) of the Income-tax Act ?"

Considering the matter apart from the authorities, it seems to us impossible that the expenditure could be revenue expenditure. It was clearly not incurred for the purpose of carrying on the concern but it was incurred in setting up the concern with a greater advantage for the trade than it had in its previous set up. The expenditure was not incurred in earing any profit but only for putting its factory, that is, its capital, in better shape so that it might produce larger profits, when worked. It really went towards effecting a permanent improvement in the profit making machinery, that is, in the capital assets. It was, therefore, a capital expenditure and not a revenue expenditure.

The case, furthermore, is completely governed by authorities. We think it comes clearly within the well-known dictum of Viscount Cave in Atherton v. British Insulated and Helsby Cables Ltd [(1925) 10 T.C. 155, 192.] That "when an expenditure is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a 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". The test formulated by Viscount Cave has been accepted by this Court : see Assam Bengal Cement Co. Ltd. v. The Commissioner of Income-tax West Bengal [(1955) 1 S.C.R. 972.]. Here the expenditure produced an enduring advantage in the shape of transfer to a better factory site, an advantage which enabled the trade to prosper and an advantage that could be expected to last for ever. It was an expense properly attributable to capital under Viscount Cave's dictum.

Mr. Pathak did not question the authority of the test laid down in Atherton's case [(1925) 10 T.C. 155, 192.], but said that test had no application in the present case as it would not apply unless by the expenditure a material asset or a covenant or right in the nature of capital was acquired. We find neither principle nor authority to support this contention. If an expenditure incurred, say for acquiring an additional plant, is capital expenditure, an expenditure incurred in dismantling and refitting the existing plant at a better site would be equally capital expenditure. They would both be capital expenditure because both were incurred for increasing the capacity of the profit making machine to earn profits and neither was incurred for earning the profits themselves. In principle, therefore, there is no reason to make a distinction as to the nature of the expense between an expenditure incurred for acquiring material capital asset or a legal right in the nature of capital and an expenditure incurred for acquiring any other advantage of an enduring nature for the benefit of the trade. It is true that it has been said, as Mr. Pathak pointed out, that the advantage acquired by the expenditure must be analogous to an asset (see Halsbury's Laws of England, 3rd ed. Vol. XX p. 162) but that only means advantage of the nature of a capital asset, that is to say, "an advantage to the permanent and enduring benefit of the trade" : see ibid page 161. It is obviously not necessary for an advantage to be of such a nature that it must be the acquisition of a material asset or of a chose in action.

As to the authorities, they are all against the view for which Mr. Pathak contends. We purpose to refer to two of them only. First, there is the case of Granite Supply Association Ltd. v. Kitton [(1905) 5 T.C. 168.]. The assessee was a company whose business was to buy and sell granite. It found it necessary to shift to a larger yard and in doing so incurred expenses for removal of stones and cranes from the old to the new yard and for re-erecting the cranes in the latter yard. It was held that the company was not entitled to a deduction for these expensed. It was said that the expenses were of the same kind as those which might have been incurred in the buying of new cranes. Lord MacLaren said (p. 171), "I think that the cost of transferring plant from one set of premises to another more commodious set of premises is not an expense incurred for the year in which the thing is done, but for the general interests of the business. It is said, no doubt, that this transference does not add to the capital value of the plant, but I think that is not the criterion." Lord McLarens's observation is completely against the view advocated by Mr. Pathak that to constitute an enduring benefit a material asset or a right must be created.

The above case, furthermore, is indistinguishable from the case in hand. Mr. Pathak sought to distinguish the present case from the Granite Supply Association Ltd. case [(1905) 5 T.C. 168.], on the ground that there the business was not running at a loss in the old yard and the expenses were incurred only to enlarge the business and hence were on capital account. We find it difficult to appreciate this distinction. Whether an expense is on capital account or not would not depend on whether it was incurred for earning larger profits than before nor would an expenditure be on revenue account because it was incurred for turning a losing concern into a profitable one.

The other case to which we will refer is Bean v. Doncaster Amalgamated Collieries Ltd. [(1946) 27

T.C. 296.]. The Colliery Company was required by a statute to incur expenses for remedial works necessary to obviate loss of efficiency in an existing drainage system due to subsidence caused by the company's workings. The Drainage Board formed a general drainage improvement scheme and the company paid a part of the expenses of the new drainage constructed under the scheme. As a result of the new drainage the Company was enabled to work its seams without incurring the liability under the statute as the new drainage system had been so constructed as to remain unaffected by the Company's workings. It was contended by the company that the payment for the new drainage was a revenue expenditure as it had not resulted in the acquisition of any capital asset, but this contention was rejected and it was held that the expenditure was on capital account and no deduction for it was allowable. Viscount Simon said (p. 312), that the expenses had been incurred "to secure an enduring advantage, within the proper application of Lord Cave's phrase in Atherton v. British Insulated and Helsby Cables Ltd. (10 T.C. 155, at page 192)". He also quoted (p. 312) with approval the observation of Uthwatt J. in the Court of Appeal that, "The result the transaction clearly was that the value of the particular coal measures - a capital asset remaining unchanged in character - was increased both for use and exchange. There was, therefore, as the result of the transaction, brought into existence, not indeed as asset, but an advantage for the enduring benefit of the trade of the Company." Obviously, therefore, there can be an enduring advantage acquired without an addition to or increase in the value of any capital asset.

It is no doubt true that the distinction between revenue expenditure and expenditure on capital is very fine and often it is difficult to decide under which class an expenditure properly falls. No such difficulty, however, arises in the present case. We think, for the reasons earlier mentioned, that the present is a plain case and we feel no doubt that the expenses for shifting and re-erection were incurred on capital account. The first question referred was clearly correctly answered by the High Court.

The appellant's case is even weaker with regard to the other question which was this :

> "Whether the assessee was entitled to claim depreciation on the said expenditure of Rs. 3,19,766/- ?"

This question was raised presumably on the basis that if in respect of the first question it was held that the expenditure was on capital account, then the depreciation should be payable on the amount of the expenditure in the same way as depreciation is allowed on capital. The claim for depreciation was made under s. 10(2)(vi) of the Income-tax Act. But as the High Court rightly pointed out, no such depreciation could be claimed because no tangible asset had been acquired by the expenditure which could be said to have depreciated.

Mr. Pathak, therefore, put the case of the appellant from a slightly different point of view. He referred us to Part V of the Form of Return given in the Rules framed under the Act. That Part deals with a claim for depreciation. Column 3 of this Part requires a statement to be made for "Capital expenditure during the year for additions, alterations, improvements and extensions". Mr. Pathak contended that this Part showed that depreciation is allowable on capital expenditure for improvements, and that in view of our answer to question No. 1 the appellant would be entitled to depreciation on the expense as capital expenses incurred for improvement. This is obviously fallacious argument. In order to be entitled to deduction on account of depreciation under this Part of the Form, there has to be an improvement of the capital asset, an increase in its value. All that we have here is an expense incurred for acquiring an advantage for the trade. That may or may not be an improvement in the capital assets. The appellant cannot claim depreciation on the amount spent

for acquiring an advantage. Whether it could claim depreciation on improvements effected to capital assets is not a question referred to the Court. The second question, therefore, was also correctly answered in the negative by the High Court.

This appeal is dismissed with costs.

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