

Commissioner of Income-Tax, Bihar and Orissa

Vs

M/s. Kirkand Coal Co.,

Civil Appeal No. 522 of 1967,

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

21.04.1970

JUDGMENT

HEGDE, J. -

1. This is an appeal by certificate from the judgment of the High Court of Patna in a reference under Section 66(1) of the Indian Income-tax Act, 1922 (in short the Act). At the instance of the Commissioner of Income-Tax, Bihar and Orissa the Income Tax Appellate Tribunal (Patna Bench) referred the following question of law to the High Court for its opinion :

"Whether the sum of Rs. 21,911/- claimed as stowing expenses is capital expense or revenue expense."

2. The High Court answered that question in favour of the assessee. It held that it was a revenue expenditure.

3. The facts of this case lie within narrow compass. The assessee M/s. Kirkand Coal Co. is a firm carrying on coal mining business. During the accounting year ending on December 31, 1956, that company spent a sum of Rs. 21,911 for stowing operation. The Department of Mines required the assessee to show certain galleries near the pitmouth as a condition precedent for working the colliery during the accounting year. The assessee claimed that the said expenditure was a revenue expenditure coming within Section 10(2)(xv) of the Act. The Income-tax Officer as well as the Appellate Assistant Commissioner overruled the contention of the assessee. They considered that expenditure as capital expenditure and hence not deductible as a permissible allowance. But on a further appeal, the Appellate Tribunal came to the conclusion that :

"Stowing is an operation carried out in the process of extraction of coal and unless it is carried out extraction of coal is not possible irrespective of the fact whether depillaring has been done or not in this year. This expenditure, is, in our opinion, a revenue expenditure, as it is necessary for the purpose of extraction of coal."

4. On the basis of that finding, it allowed the assessee's appeal and allowed the expenditure in question as a permissible deduction. The High Court has accepted the conclusion of the Tribunal. The finding of the Appellate Tribunal that stowing is an operation carried out in the process of extraction of coal and unless it is carried out, extraction of coal is not possible irrespective of the fact whether depillaring has been done or not is a finding of fact. That finding was binding on the High Court. It is equally binding on us. In view of that finding, the High Court was justified in holding that the expenditure in dispute is a revenue expenditure.

5. This Court had in various decisions laid down the principles to be applied in distinguishing revenue expenditure from capital expenditure. In *Bombay steam Navigation Co. v. Commr. of Income-tax, Bombay*, (AIR 1965 SC 1201) the Court observed :

"Whether a particular expenditure is revenue expenditure incurred for the purpose of business must be determined on a consideration of all the facts and circumstances, and by the application of Principles of Commercial Trading. The question must be viewed in the large context of business necessity or expediency. If the outgoing to expenditure is so related to the carrying on or conduct of the business, that is may be regarded as an integral part of the profit earning process and not for acquisition of an asset or a right of a permanent character, the possession of which is a condition of the carrying on of the business, the expenditure may be regarded as revenue expenditure."

6. On the facts found by the Tribunal it is quite plain that the expenditure in question is a revenue expenditure.

7. In the result this appeal fails and the same is dismissed with costs.

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