Commissioner of Income Tax, West Bengal II, Calcutta

Vs

M/S. Kalyanji Mavji & Company

Civil Appeal No. 2098 of 1972

(R. S. Pathak, P. N. Shinghal JJ)

14.01.1980

JUDGMENT

PATHAK, J. –

1. This appeal by certificate granted by the High Court at Calcutta under Section 66-A(2) of the Indian Income Tax Act, 1922, is directed against the judgment dated August 5, 1971 of that High Court disposing of an income tax reference.

2. The respondent-assessee is a registered firm and owns several collieries in West Bengal and Bihar. One of the collieries is known as the South Samla Colliery. The South Samla Colliery was under military occupation from 1942 and was released in 1955. During the period of military occupation the assessee incurred expenditure on account of minimum royalty payable in respect of the colliery, the surface rent and salaries for the watch and ward employees. The expenditure was allowed in income tax proceedings as a business expenditure. After the colliery was released by the military, the assessee incurred a further expenditure amounting to Rs. 1,61,742 on the colliery with a view to resuming mining operations. The expenditure was incurred during the previous year beginning October 24, 1957, and ending November 11, 1958, relevant to the assessment year 1959-60. In the assessment proceedings for that assessment year the assessee claimed a deduction of the amount of Rs. 1,61,742 under Section 10(2)(xv) of the Indian Income Tax Act, but the deduction was disallowed by the Income Tax Officer on the ground that the expenditure was capital in nature. On appeal, the Appellate Assistant Commissioner affirmed that the expenditure was in the nature of capital expenditure. The assessee proceeded in second appeal, but the Income Tax Appellate Tribunal, without giving any reasons of its own, merely recorded its agreement with the Income Tax authorities. The assessee obtained a reference to the High Court at Calcutta for its opinion of the following question :

> Whether, on the facts and circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the expenditure claimed on the South Samla Colliery at Rs. 1,61,742 was capital in nature ?

The High Court noted the following facts :

> 2a. The assessee carried on business in coal as the owner of various collieries. The South Samla Colliery, which was one of them, was occupied by the military from 1942 until was derequisitioned in 1955. During that period the assessee did not, because he could not, work the colliery. He continued, however, carrying on his business in coal and working other collieries during that period. While the South

Samla Colliery remained under military occupation the assessee incurred expenditure on payment of surface rent and minimum royalty in respect of that colliery and also on account of salary for the watch and ward staff. The expenditure had been claimed and allowed as business expenditure of the assessee. After the colliery was handed over to the assessee upon derequisition, the assessee incurred, during the relevant period, an expenditure of Rs. 1,61,742 in renovating the building, reconditioning the machinery and clearing the land of debris accumulated over a number of years. The expenditure of Rs. 1,61,742 consisted of Rs. 66,937 spent on the staff and labour force by way of salaries, wages and other benefits and an amount of Rs. 94,805 spent on the purchase of various stores, machinery repairs, dhowrah repairs etc. This expenditure had to be incurred by the assessee for the purpose of putting the machinery in working order and bringing the colliery to a state where the mining operations could be resumed. The colliery had not started working and mining operations had not been resumed during the relevant year.

3. The High Court observed that the assessee was carrying on its business throughout and the circumstance that one of the collieries was not being worked did not affect the carrying on of that business. The business of the assessee, the High Court said, had to be considered as a whole and not on the basis of its different sources of supply or units of production. The High Court held that on the facts admitted and found it could not be said that any fresh asset had been acquired by the assessee by spending Rs. 1,61,742. The expenditure, it observed, was incurred by the assessee for the purpose of carrying on an existing an not acquiring any concern not in existence. Accordingly, it held that the expenditure was in the nature of revenue expenditure and, therefore, answered the question in favour of the assessee.

4. In this appeal the first contention raised by the revenue is that the High Court had no jurisdiction to reappraise the facts and, therefore, its finding on the nature of the expenditure is vitiated. The contention is without substance. The facts on which the High Court has relied are admitted between the parties or are facts found by the income tax authorities. We have no hesitation in rejecting the first contention.

5. The second contention is that the claim of the assessee must be considered with reference to Section 10(2)(v) and not Section 10(2)(xv) of the Act. It is urged that if Section 10(2)(v) is the relevant clause, being the specific provisions in respect of expenditure on current repairs to buildings and machinery, there is no justification for relying on Section 10(2)(xv). Section 10(2)(xv) is a residuary clause, and deals with expenditure not being an allowance of the nature described in any of the preceding clauses of Section 10(2). The submission is that where repairs are effected to building and machinery a deduction under Section 10(2) is permissible only in respect of current repairs, and repairs which are not "current repairs" are not intended to be the subject of relief. The Act, it is contended, limits the repairs to "current repairs". The repairs made by the assessee, it is said, cannot be described as "current repairs". Now, this contention rests on the principle that if a special provision covers the case, resort cannot be had to a general provision. It seems to us that if the renovation of the building, the reconditioning of machinery and the removal of debris cannot be described as "current repairs" - and we assume that to be so - the case would be entitled to consideration under Section 10(2)(xv). Section 10(2)(v) deals with current repairs only. The subject-matter of Section 10(2)(v) is "current repairs" and it appears difficult to agree that repairs which are not "current repairs" should not be considered for deduction on general principles or under Section 10(2)(xv). There must be very strong evidence that in the case of such repairs, the legislature intended a departure from the principle that an expenditure, laid out or expended wholly and

exclusively for the purposes of the business, and which expenditure is not capital in nature, should not be allowed in computing the income from business. There is nothing in the language of Section 10(2)(v) which declares or necessarily implies that repairs, other than current repairs, will not quality for the benefit of that principle. We must remember that on accepted commercial practice and trading principles an item of business expenditure must be deducted in order to arrive at the true figure of profits and gains for tax purposes. The rule was held by the Privy Council in CIT v. Chitnavis (C. I. T. v. S. M. Chitnavis, 59 IA 290 : AIR 1932 PC 178 : 1932 ALJ 647) to be applicable in the case of losses, and it has been applied by the courts in India to business expenditure incurred by an assessee. Motipur Sugar Factory Ltd. v. CIT (28 ITR 128 (Pat HC)) and Devi Films Ltd. v. CIT (75 ITR 301 (Mad HC). The principle found favour with this Court in Badridas Daga v. CIT (34 ITR 10, 15 : AIR 1958 SC 783 : 1959 SCR 690), and Calcutta Co. Ltd. v. CIT (37 ITR 1, 9 : AIR 1959 SC 1165 : (1960) 1 SCR 185). If the contents of that rule be true on general principle, there is good reason why the scope of Section 10(2)(xv) should be construed liberally. In our opinion, even if the expenditure made by the assessee in the present case cannot be described as "current repairs", he is entitled to invoke the benefit of Section 10(2)(xv). We may mention that in Law Shipping Co. Ltd. v. Commissioner of Inland Revenue (12 Tax Cases 621, 625) it has been held that accumulated arrears for repairs are none the less repairs necessary to earn profits, although they have been allowed to accumulate.

6. The question then is whether Section 10(2)(xv) is attracted. There can be little doubt that the expenditure incurred is incidental to the business of the assessee. It was involved in renovating the buildings, reconditioning the machinery and clearing the debris from the land. All the work done was for the purpose of resuming the operation of the colliery. The expenditure was laid out wholly and exclusively for the purposes of the business. We do not think there can be any dispute as to that.

7. But the more serious question is whether the expenditure can be regarded as capital in nature, for if that be so the benefit of Section 10(2)(xv), on its plain terms, must be denied. Now, whether an expenditure can be described as capital or revenue falls to be decided by several tests, each one of which approaches the question from one perspective or another conditioned by the particular facts of each case. We need not refer to all of them. On the facts of the present case, it seems sufficient to mention the tests laid down by this Court in Assam Bengal Cement Co. Ltd. v. CIT ((1955) 27 ITR 34 : AIR 1955 SC 89 : (1955) 1 SCR 972). The business of the assessee in the present case was coal-mining, and it was carried on by the operation of a network of collieries. Each colliery was a unit of production. While the several units of production continued to be employed and the business continued to be carried on, one alone of the units, the South Samla Colliery was compelled to suspend production. The suspension was expected to be of temporary duration, because the property was merely requisitioned for, military use, it was not acquired. As soon as the property was derequisitioned, the assessee took measures to resume production of coal. It was necessary to remove the impediments which had come in the way by reason of the temporary suspension of work. The buildings were renovated, the machinery reconditioned and the accumulated debris removed from the land. The colliery was in a word, reinstated to the condition necessary for ensuring production. No new asset was brought into existence; no advantage for the enduring benefit of the business was acquired. An activity which was continuously in operation but had been temporarily suspended was to be resumed. It is immaterial that during the year under consideration there was no mining activity. That the colliery was regarded as an asset of a continuing business all along, even during the period of military occupation, is evidenced by the fact that expenditure incurred by the assessee during that period in respect of the colliery was allowed as a permissible deduction in its income tax assessments. The expenditure of Rs. 1,61,742 under consideration in the present case was also expenditure laid out as part of the process of profit earning. The nature of the

expenditure is clearly revenue in character. The High Court is right in holding that the expenditure is not of a capital nature.

The appeal is dismissed with costs.

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