Commissioner of Income Tax, Bombay City-I, Bombay

Vs

Associated Cement Companies Ltd., Bombay

Civil Appeal No. 512 (NT) of 1975

(CJI R.S. Pathak, M.H. Kania JJ)

04.05.1988

JUDGMENT

KANIA, J. -

1. This is an appeal, on a certificate given under Section 66-A(2) of the Indian Income Tax Act, 1922, against a judgment and order of a Division Bench of the Bombay High Court. The appeal is preferred by the Commissioner of Income Tax and the assessee, the Associated Cement Companies Ltd. is the respondent.

2. The judgment against which the appeal is directed was rendered on a reference under Section 66(1) of the Indian Income Tax Act, 1922. The question referred to the court for consideration was as follows :

> Whether on the facts and in the circumstances of the case, the expenditure of Rs. 2,09,459, or any portion thereof, incurred by the company in the accounting period relevant to the assessment period 1959-60 was allowable as deduction in determining the profits of the company for the assessment year 1959-60.

3. The relevant facts ware as follows :

> The assessee, the Associated Cement Companies Ltd. has a chain of factories manufacturing cement all over the country. The assessment year in question is the year 1959-60 and the corresponding previous year was ended on July 31, 1958. One of the factories of the assessee was situated at Shahabad, which is now in the State of Karnataka, but was at the relevant time forming part of the then State of Hyderabad. In September 1956, the Government of Hyderabad had decided to include the area on which the said factory at Shahabad was situated with in the municipal limits of the Shahabad Town Municipality. A tripartite agreement between the Government of Hyderabad, the assessee company and the Municipality was arrived at one October 30, 1956 between the aforesaid three parties. Under the agreement, the assessee undertook to supply water to the Shahabad town and village. It further agreed to put up a high tension electric transmission line and to supply electricity for the street lighting of the Shahabad town. It also agreed to concrete free of charge the existing main road from the factory up to the railway station via the main bazaar. During the relevant previous year, the only work done was with respect to provision of water supply to the said town and village. Under the agreement, the assessee initially agreed to supply certain quantity of water to the Shahabad town at a concessional

> rate and for the purpose of such supply the assessee company was to undertake and complete at its own cost the water supply scheme for the town and village, involving laying of the main water pipelines. The assessee company was to be the owner of the pipelines, installations and other accessories pertaining to the water supply lying within the company's premises and on the land a little outside the premises. The Shahabad Municipal Committee was to take over possession of the remaining pipelines, installations and accessories and it was declared to be the owner thereof. These pipelines, installations, etc. had to be maintained by the Municipal Committee in future. Under Clause 23, in consideration of the assessee company having agreed to provide these amenities, supply and services, the Government of Hyderabad undertook not to include any of the properties of the company comprising the cement factory, the main workshop, the housing colony, quarries and the limestone bearing lands within the limits of the Shahabad Municipality or the village panchayat or like body for a period of fifteen years from the date of the agreement.

4. According to the assessee, a sum of Rs. 2,09,459 was spent during the year of account under this agreement and this amount pertained to the laying of pipelines, installations and accessories of which the Shahabad Municipality became the owner under the agreement and this amount was claimed as a deduction. The Income Tax Officer disallowed this amount, holding that it was a capital expenditure on the basis that as a result of this expenditure the company derived an advantage of an enduring nature, namely that it would not have to pay municipal taxes for a period of fifteen years. On an appeal by the Company, the Appellate Assistant Commissioner allowed the deduction holding that the amount was the payment of a composite sum of the revenue outgoings for the following 15 years. The revenue preferred an appeal to the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal passed an order directing the Income Tax Officer to scrutinize the expenditure and allowed the deduction of the expenditure to the extent that it did not result in the Company becoming the owner of any asset.

5. Before the High Court it was contended on behalf of the Company that the entire amount of Rs. 2,09,459 pertained to expenditure on pipelines installations and other accessories which under the agreement came to ownership of the Shahabad Town Municipality and did not pertain to any increase of the assets of the Company. The Division Bench which decided the reference has pointed out that it had not been disputed by the revenue before the Tribunal that the entire expenditure concerned was laid out for the purpose of business and the only question was whether it was capital expenditure or revenue expenditure. The only ground on which the claim of the assessee for deduction of the said expenditure under Section 10(2)(xv) of the Indian Income Tax Act was resisted was that it was capital expenditure. After exhaustively considering several decisions of the Supreme Court and several English decisions, the Division Bench of the Bombay High Court came to the conclusion that the expenditure in question was revenue expenditure and was liable to be allowed as deduction. On the basis of these conclusions the Bombay High Court decided the question referred in their affirmative and in favour of the assessee.

6. In the judgment appealed against the learned Judges have referred to the dictum of Viscount Cave, L.C. in Atherton v. British Insulated and Helsby Cables Ltd. ((1924) 10 Tax Cases 155. 192-83 : (1926) AC 205 (HL) which runs as follows :

> But 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.

7. The Division Bench further pointed out that this dictum was stated with approval by this Court in Assam Bengal Cement Co. Ltd. v. CIT ((1955) 27 ITR 34 (SC) : AIR 1955 SC 89), where this Court inter alia approved the decision of a Full Bench of the Lahore High Court in Benarsidas Jagannath, In re ((1947) 15 ITR 185 (Lah) (FB) holding that expenditure may be treated as property attributable to capital when it is made not only once and for all, but with a view to bringing into existence an asset or an advantage for enduring benefit of the trade. If, on the other hand, what is got rid of by lumpsum payment is an annual business expense chargeable against revenue, the lumpsum payment should equally be regarded as a business expense, but if the lumpsum payment brings in a capital asset, then that puts the business on another footing altogether.

8. The Division Bench also took into account the fact that the assessee was already running a cement factory at Shahabad and it was not as if the expenditure incurred was in connection with starting of a new business.

9. Mr. Manchanda, learned counsel for the appellant has raised only two contentions before us. The first contention was that, since, as a result of the expenditure incurred, certain water pipelines were laid which could be regarded as capital assets the expenditure could only be regarded as capital expenditure. In our view, there is no substance in this contention. It is true that certain water supply lines did come to be laid as a result of the expenditure incurred, but the facts on record, which we have referred to above, clearly show that these water pipelines on which the expenditure in question was incurred were not assets of the assessee, but assets of the Shahabad Municipality and hence it was not as if the expenditure resulted in bringing into existence any capital asset for the Company. The only advantage derived by the assessee by incurring the expenditure was that it obtained an absolution or immunity, under normal conditions, from levy of certain municipal rates and taxes and charges. In view of this the first contention of Mr. Manchanda must be rejected.

10. The next submission made by Mr. Manchanda was that the advantage of not being liable to pay municipal rates, taxes, etc. which the assessee company secured by reason of making the expenditure in question was for a period of fifteen years and hence it could be said to be an advantage of an enduring nature, so that the expenditure incurred in acquiring the same would be regarded as capital expenditure. In our view it is difficult to accept this submission either. As observed by the Supreme Court in the decision in Empire Jute Co. Ltd. v. CIT ((1980) 124 ITR 1 (SC) : (1980) 4 SCC 25 : 1980 SCC (Tax) 335) that there may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principles laid down in this test. What is material to consider is the nature of the advantage in advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more effectively or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. In that case the appellant, a company carrying on the business of manufacture of jute, was a member of the Indian Jute Mills Association, which was formed with the objects, inter alia, of protecting the trade of its members, including imposing restrictive conditions on the conduct of the trade and adjusting the production of the mills of its members. A working time agreement was entered into between the

members restricting the number of working hours per week for which the mills were entitled to work their looms. Clause 4 of the working time agreement provided that no signatory shall work for more than 45 hours per week. Clause 6(b) provided that signatories shall be entitled to transfer, in part or wholly, their allotment of hours of work per week to any one or more of the other signatories. Under this clause the appellant purchased "looms hours" from four other mills for the aggregate sum of Rs. 2,03,255 during the previous year relevant to the assessment year 1960-61 and claimed to deduct that amount as revenue expenditure. The Tribunal held that the expenditure incurred by the appellant was revenue in nature and hence deductible in computing the appellant's profits. The High Court reversed this decision, but, on appeal, the Supreme Court allowed expenditure as deductible expenditure on the basis of the principle set out earlier. If this principle is applied to the facts of the case before us, what we find is that the advantage which was secured by the assessee by making the expenditure in question was the securing of absolution or immunity from liability to pay municipal rates and taxes under normal conditions for a period of fifteen years. If these liabilities had to be paid, the payments would have been on revenue account and hence the advantage secured was in the filed of revenue and not capital. As capital assets of the assessee company and no change in its capital structure. The pipelines, etc. which might have been regarded as capital assets and which came into existence as a result of the expenditure incurred did not belong to the assessee company but to the municipality. In these circumstances, applying the principles laid down in Empire Jute Co. case ((1980) 124 ITR 1 (SC) : (1980) 4 SCC 25 : 1980 SCC (Tax) 335) the expenditure is clearly liable to be allowed as deductible from the profits under Section 10(2)(xv) of the Indian Income Tax Act. In the result, the appeal fails and is dismissed with costs.

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