Arvind Mills Ltd.

Vs

Commissioner of Income-tax, Gujarat

Civil Appeal No. 1836 (NT) of 1977

(S. Mohan, G. N. Ray JJ)

JUDGEMENT

G. N. RAY, J.:-

1.This appeal arises out of a Certificate granted by the High Court of Gujarat against its judgment dated 9/ 10 March, 1977 in come-tax Reference No. 197 of 1976. The appellant - Arvind Mills Ltd. is a Company incorporated under the Companies Act and running a textile mill. For the assessment year 1972-73 for which previous year is the calendar year, a total income was assessed by the Income-tax Officer on 24th January, 1973 at Rupees 1,30,92,040 / -. The appellant claimed a deduction of Rupees 2,02,907/- being the contribution made by the assessee towards the cost of Town Planning Scheme under S. 66 of the Bombay Town Planning Act, 1954. The aforesaid payment made by the assessee was described as betterment charges. The Income-tax Officer disallowed the claim for deduction by his Order dated 25th January, 1974. The appellant preferred an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner by his order dated 19th September, 1974 held inter alia that the expenditure in question was a revenue expenditure but since the assessee had paid the betterment charges in ten equal instalments with interest, instead of payment in lump of the entire amount of Rupees 2,02,907/-, a sum of Rs. 14,434/- only since paid by the assessee by way of instalment in the year of assessment should be deducted from income. The contention of the assiessee that since the method of accounting of the assessee was mercantile, the entire amount of Rs. 2,02,907 / - should be deducted and not the yearly instalment of Rupees 14,434/ -, was not accepted. The assessee thereafter preferred a Cross Appeal against the order of the Appellate Assistant Commissioner before the Income-tax Tribunal in I.T.A. No. 133 (AHD)/74-75. The Tribunal held inter alia that the betterment charge was not revenue expenditure. Hence no deduction on account of the betterment charge was allowable. The Tribunal, however, did not interfere with the deduction of Rs. 14,434/- since allowed by the Appellate Assistant Commissioner.

2. At the instance of the assessee, the following question of law was referred by the Tribunal to the High Court of Gujarat:

> "Whether on the facts and circumstances of the case, the Tribunal was justified in. disallowing the betterment charges."
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> By the impugned judgment the High Court of Gujarat relying on the decision of the said High Court in the case of Addl. Commr. of Income-tax, Gujarat v. Rohit Mills Ltd., reported in (1976) 104 ITR-132 decided the question against the appellant-assessee but on an oral application, the High Court granted a Certificate to the

appellant under S. 261 of the Income-tax Act, 1961.

3. Mr. Salve, learned counsel appearing for the appellant-assessee has contended that the betterment charge payable under the Bombay Town Planning Act was a compulsory payment and the decision to effect improvement on the lands within the Town Planning Scheme did not depend upon the volition of the owner of the land. It was immaterial whether the assessee was interested or not for the alleged improvement of the land under the Scheme but the assessee was under an obligation to make the payment of betterment charges imposed under the Bombay Town Planning Scheme. Mr. Salve has contended that the Scheme prepared under the Bombay Town Planning Act becomes final on publication of the Scheme under S. 51 and the effect of the final Scheme has been provided under S. 53 of the said Act. S. 54 provides for the cost of the Scheme and S. 55 provides for the calculation of the improvement. Mr. Salve has contended that if various provisions of the Bombay Town Planning Act are referred to, it will be quite apparent that the betterment charge is nothing but a statutory exaction and in its reality such betterment charge partakes the character of imposition of levy. Mr. Salve has strongly relied on the decision of the Madras High Court in the case of Dollar Company v. Commr. of Income-tax (1986) 161 ITR 455: (1987 Tax LR 86). The assessee-Dollar Company had to make payment towards the betterment contribution for the lands owned by the Company coming within the Madras Town Planning Scheme. The assessee-Company claimed deduction of the above payment on the footing that such payment was a revenue expenditure. The Income-tax Officer, however, disallowed the claim by holding that such payment was in the nature of capital expenditure. Such decision of the Income-tax Officer was affirmed by the Appellate Assistant Commissioner and also by the Income-tax Appellate Tribunal. On a reference, the Madras High Court held inter alia that on a reading of the various provisions of the Madras Town Planning Act, it was evident that the betterment contribution was a compulsory levy made by the Corporation and the precondition for such levy was that consequent upon making any Town Planning Scheme, the value of the property in the Scheme has increased or is likely to increase. Hence the payment of betterment contribution did not result in any increase in the value of the property but because of the increase in the value of the property as a result of the making of the Town Planning Scheme, the owner of the property was required to make a contribution which was called a betterment contribution. Since there was no direct nexus between the expenditure incurred by the Corporation and the increase in the value of the property, the expenditure incurred by the assessee for payment of betterment charge must be held to be revenue expenditure. It has been further held by the Madras High Court that commercially considered, the expenditure which has been so incurred for facilities such as roads, drainage facility etc., for the enjoyment of the property would be laid out wholly and exclusively for purposes of the business and the payment of the betterment contribution was in the nature of a payment for such facility and only its computation was on the basis of appreciation in value. It was held that consequently the expenditure incurred byway of the bettrment contribution could not be called as an expenditure of a capital nature and, therefore, such payment was deductible from the income of the assessee.

4. Mr. Salve, relying on the aforesaid decision of the Madras High Court, has contended that the betterment charges paid by the appellant-assessee should also be construed as revenue expenditure because there was no direct nexus between the expenditure incurred by the Corporation and the increase in the value of the property of the assessee. He has contended that the improvement effected on the lands included within the Town Planning Scheme, resulted in more efficiently carrying out the business of the assessee and the expenditure which had been incurred for such improvement by way of betterment fee was thus directly connected with the business activities of the assessee. Since enjoyment of the property improved under the Town Planning scheme was directly linked with the carrying on of the business of the assessee and the payment of betterment

contribution was for such facility in carrying out the business activities more effectively and its computation was only on the basis of appreciation in value, such betterment contribution was in reality a revenue expenditure and the High Court of Gujarat erred in holding that it was in the nature of a capital expenditure. Mr. Salve has submitted that the various provisions of the Bombay Town Planning Scheme had been considered by this Court in the case of State of Gujarat v. Shantilal Mangaldas, reported in (1969) 3 SCR 34 1.: (AIR 1969 SC 634). He has contended that under the Scheme, lands of various owners are treated as lands belonging to a common pool and for better enjoyment of lands by the residents certain improvements are effected and facilities are provided under the Scheme. Although by such process, the value of the land is likely to increase, the involuntary payment of betterment charge has a direct nexus with the running of the business in a better way because of the improvement effected and by that process the same becomes a revenue expenditure as indicated by the Madras High Court. Mr. Salve has referred to a decision of the Privy Council in Mohanlal Har Govind of Jubbulpore v. Commr. of Income-tax C.P. & Berar, Nagpur, reported in (1949) 17 ITR 473: (AIR 1949 PC 311). In consideration of certain sums payable short term licence was granted to acquire tendu leaves for manufacturing Beedi (country made cigarette). The Privy Council held that such expenditure was revenue expenditure and not capital expenditure. Mr. Salve has also referred to a decision of this Court made in the case of L. H. Sugar Factory and Oil Mills (P) Ltd. v. Commr. of Income-tax, U.P., Reported in (1980) 125 ITR 293: (AIR 1981 SC 395). In the said case, the assessee a private company, was carrying on business in the manufacture and sale of sugar. During the relevant accounting period the assessee paid two amounts:

> i) a contribution of certain sums at the request of the Collector of the District towards the construct on of the Deoni Dam Majhala Road
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> ii) a contribution of Rs. 50,000/- to the State of U.P. towards meeting the cost of construction of roads in an area around the factory under a sugarcane development scheme. Under the said scheme, one third of the cost was to be borne by the State Government, one third by the Central Government and the remaining one third by the sugarcane growers and the owners of sugar factories in the area.
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> This Court held in the said decision that the first contribution at the instance of the Collector towards the construction of Deoni Dam was not deductible expenditure under S. 10(2)(xv) of the Income-tax Act because the said amount was contributed long after the construction of the dam and the roads in question had also been constructed long back and there was nothing to show that the contribution of the amount had anything to do with the business of the Company or the construction of the dam or the roads was in any way advantageous to the assessee's business. So far as the second sum of Rs. 50,000/- was concerned, it has been held by this Court that the said sum was deductible under S. 10(2)(xv) because the construction of the roads had facilitated the transport of the sugarcane to the factory and outflow of sugar manufacture by the . factory of the assessee to the market centres. It was indicated that the construction of the roads had facilitated the business operation of the assessee and had enabled the management to carry on business more efficiently and profitably. This Court has noted that it was true that the advantage secured for the business of the assessee Was of a long duration inasmuch as it would last so long as the roads continued to be motorable but it was not an advantage in the capital field because no tangible or intangible asset was acquired by the assessee nor there was any addition to an expansion of the profit making apparatus of the assessee. The amount of Rs. 50,000/- was contributed by the assessee for the purpose of facilitating

the conduct of the business and making it more efficient and profitable without the assessee getting an advantage of an enduring benefit to itself. In the aforesaid circumstances, this Court has held that such expenditure should be held to be a revenue expenditure and was deductible.

5. Mr. Salve has contended that because of the improvement effected under the Town Planning Scheme the running of the business of the assessee got improved and thus the betterment fee required to be paid under the Scheme had a direect nexus with the running of the business of the assessee. Hence, such betterment charge particularly in the context that such payment was involuntary and was in the nature of compulsory exaction from the assessee should be held to be a revenue expenditure made for better running of the business. He has submitted that since the construction of the road in and around L. H. Sugar Factory had a nexus for the running of the business more efficiently and profitably, this Court in the said Sugar Factory's case has held that a contribution of Rs. 50,000 / - even when such contribution was not in the nature of a compulsory payment but, a pure and simple voluntary contribution, was a revenue expenditure and as such it was deductible from the income of the assessee. Mr. Salve has therefore submitted that the impugned decision of Gujarat High Court must be held to be erroneous and the reference should be answered in favour of the assessee by allowing the betterment charges paid by the assessee-Company as a deductible expenditure.

6. The learned counsel appearing for the respondent has, however, contended that unless it can be demonstrated that the expenditure is exclusively for business purpose, the same cannot be held to be a revenue expenditure and as such deductible from the income of the assessee. The learned counsel has contended that there must be a direct connection with the business activities and the expenditure made and a remote connection with the business activities is also not relevant for the purpose of treating the expenditure as revenue expenditure. He has contended that in L. H. Sugar's case (AIR 1981 SC 395) the question of capital asset did not arise because the road constructed in and around the factory did not belong to the factory, This Court has specifically held in L. H. Sugar's case that the advantage derived from the construction of the road was not in the capital field because no tangible or intangible asset was acquired by the assessee nor was there any expansion to the profit making apparatus of the assessee. The learned counsel for the respondent has stated that under the BombayTown Planning Scheme, the lands of different owners within the Scheme are treated in a common pool and various improvements are effected for the better enjoyment of the lands in question. By such improvements, the value of the land increases and it was in consideration of such increase valuation of the land, the betterment fees are charged. He has submitted that it is immaterial whether the assessee had a desire for the improvement of the land in question. The fact remains that under the statute, such improvement had been effected and the assessee getting advantage of enhancement of value of land in question is required to pay betterment fee. He has also submitted that in Mohanlal Har Govind's case (AIR 1949 PC 311) (supra) the Privy Council has held the expenditure incurred for obtaining licence to procure tendu leaves as revenue expenditure because tendu leaves was essential raw material for manufacturing Beedi and as such the expenditure had a direct nexus with day-to-day running of the business of manufacturing Beedi. Hence, the said decision of Privy Council is Clearly distinguishable. He has contended in the facts of this appeal, the Gujarat High Court has rightly held that the expenditure was a capital expenditure and not revenue expenditure. The learned counsel has contended that when a capital expenditure is incurred, the said capital expenditure also ultimately enure to the efficient running of the business but on that score the expenditure on capital asset does not lose the character of capital expenditure and does not become a revenue expenditure. He has submitted that the Madras High Court has failed to appreciate that the expenses incurred by making payment of betterment fees was in essence an expenditure on account

of increase in the valuation of the land of the assessee and such expenditure has no direct nexus with the day-to-day running of the business. In the aforesaid circumstance, the learned counsel for the respondent has submitted that no interference is called for in this appeal and the same should be dismissed.

7. After considering the respective contentions of the learned counsel for the parties, it appears to us that under the Bombay Town Planning Scheme, the lands of different owners including the land of the assessee were treated as if included in a common pool and various improvements have been effected for the better enjoyment of the lands under the Scheme. For such improvement by way of laying down roads, making provision for drainage etc. under the scheme, the owner got the advantage of betterment of the land in the question and there is no manner of doubt that the valuation of the land had increased because of the improvements effected on the land. Simply because by such improvement it has also resulted in providing better facilities for carrying out the business of the assessee, the betterment charge required to be paid by the assessee, does not become the revenue expenditure. Such payment has no direct nexus with the day-to-day running of the business. In our view the learned counsel for the respondent is justified in submitting that the capital expenditure incurred in connection with the business activities ultimately results in efficiently carrying on the business and by that process gives aid in running of the day-to-day business more efficiently but simply on that score, the capital expenditure, does not become a revenue expenditure. In our view, the learned counsel for the respondent is also justified in his contention that in deciding whether an expenditure is a capital expenditure or a revenue expenditure, the question of voluntary and/or involuntary payment becomes immaterial. It is the nature of expenditure that determines the issue. The L. B. Sugar Factory's case (AIR 1981 SC 395) (supra), it has been specifically indicated by this Court that the assessee did not acquire any tangible or intangible right on the roads constructed in and around this Court that the assessee did not acquire any tangible or intangible right on the roads constructed in and around the factory but because of such roads constructed day-to-day running of the business was improved by minimising the operational cost in manufacturing sugar. In such circumstances, the expenditure incurred for improving day-to-day running of the business by way of voluntary contribution of Rs. 50,000/- when such expenditure had no connection with the increase or in creation of any capital asset or acquiring any tangible or intangible right in the property in question namely the roads constructed in or around the factory, was treated as revenue expenditure. The decision of the Privy Council in Har Govind's case (AIR 1949 PC 311) (supra) in holding that the expenditure incurred for obtaining licences for acquiring tendu leaves for manufacturing beedi was a revenue expenditure can be easily explained by indicating that such expense for obtaining licence to procure tendu leaves was an expenditure to acquire basic raw material for manufacturing beedi. Such expenditure had nothing to do with any capital asset. Hence, the expenditure having a direct nexus with day-to-day running of the business of manufacturing beedi by procuring basic raw material is certainly a revenue expenditure. But the facts in the instant appeal are quite different. The aforesaid aspect is totally absent in the instant case. In our view, the High Court of Gujarat has rightly held that the betterment charge on account of increase in the valuation of the land of the assessee should not be held as a revenue expenditure although general improvement of the area may have an impact on better running of the business. We, therefore, find no reason to interfere with the decision of the Gujarat High Court by accepting the reasonings of Madras High Court in Dollar Company's case (1987 Tax LR 86) (supra). The instant appeal, therefore, fails and is dismissed without any order as to costs. Appeal dismissed.

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