Commissioner of Income Tax

Vs.

Bombay Dyeing & Manufacturing Co. Ltd.

Civil Appeal Nos. 593-94 of 1978

(B. P. Jeevan Reddy, M. K. Kukherjee JJ)

29.02.1996.

ORDER

BY THE COURT

These appeals are preferred against the judgment of the Bombay High Court rejecting an application under s. 256(2) of the IT Act. The Revenue had applied for referring the following two questions for the opinion of the High Court :

> "(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the professional charges paid by the assessee-company to its solicitors for effecting the amalgamation of Nawrosjee Wadia Ginning & Pressing Co. with it, was of revenue nature and should be allowed as a deduction in the computation of its total income ?
>
> (ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the 'assessee-company' was entitled to a deduction for a sum of Rs. 2,25,000 in respect of the contribution made by it to the Maharashtra Housing Board towards the construction of tenements for its workers?"

2. The facts concerning the first question are the following : a company named Nawrosjee Wadia Ginning & Pressing Co. was amalgamated with the assessee-company. In that connection an expenditure of Rs. 10,350 was incurred by the assessee-company towards the professional charges paid to the firm of solicitors. In the assessment proceedings the said amount was claimed as a revenue expenditure. The assessee's case was that Nawrosjee Wadia Ginning & Pressing Co. was engaged in the same business as the assessee. In other words, the business of both the companies were "complimentary". The directors of both the companies thought that it would be advantageous if both the companies are amalgamated. Accordingly, a scheme of amalgamation was evolved. It was submitted that the legal expenses incurred in connection with the said amalgamation are in the nature of revenue expenditure. The ITO did not agree nor did the AAC. On further appeal, the Tribunal upheld the assessee's contention. It disagreed with the Revenue's contention that inasmuch as the said amalgamation resulted in acquisition of the other company by the assessee, which acquisition was in the nature of acquisition of a capital asset, the legal expenses incurred in that behalf partake the nature of capital expenditure. The Tribunal was of the opinion that "as both the companies were carrying on complimentary business and their amalgamation was necessary for the smooth and efficient conduct of the business", it is an expenditure laid out wholly and exclusively for the purpose of the business of the assessee. In view of the said finding and also in view of the decision of this Court in Bombay Steam Navigation Co. (1953) Pvt. Ltd. vs. CIT (1965) 56 ITR 52

(SC) , we are of the opinion that the Tribunal was right in its conclusion. The decision in Bombay Steam Navigation (supra) also pertains to amalgamation of two shipping companies. The assessee-company took over the assets of the other company and part of the price was treated as a loan secured by a promissory note and hypothecation of all movable properties of the assessee company. The loan was to carry simple interest at 6 per cent. The question that arose in the said case was whether the interest paid upon the said loan was deductible as revenue expenditure. It was held by this Court that it was an expenditure deductible under s. 10(2)(xv) of the IT Act. It was held that transaction of acquisition of the asset was closely related to the commencement and carrying on of the assessee's business and, therefore, interest paid on the unpaid balance of the consideration for the assets acquired had, in the normal course, to be regarded as expenditure for the purpose of the business which was carried on in the accounting periods. In the course of the judgment this Court referred to the earlier decision of this Court in State of Madras vs. G. J. Coelho (1954) 53 ITR 186 (SC) wherein it was held that the interest on the amount borrowed for acquiring a capital asset is deductible as revenue expenditure. It is true, that in the said decision this Court reaffirmed the well established principle that any expenditure laid out for acquiring an asset of a permanent character would be capital expenditure, held at the same time that inasmuch as the acquisition of the other company was in the course of carrying on of the assessee's business, the interest paid thereon was deductible under s. 10(2)(xv) of the Act. In this case too, the Tribunal has recorded a finding that the acquisition of Nawrosjee Wadia Ginning & Pressing Co. was necessary for the smooth and efficient conduct of the assessee's business. Following the ratio of the aforementioned decisions of the Court, we hold that the expenditure incurred towards professional charges of the solicitors firm for the services rendered in connection with the said amalgamation was in the course of carrying on of the assessee's business and, therefore, deductible as a revenue expenditure. In this view of the matter, it is not necessary for us to deal with the other decisions cited before us on this question.

3. Now coming to the second question, the finding of the Tribunal is that the amount of Rs. 2,25,000 was contributed by the assessee to the Maharashtra Housing Board towards construction of tenements for the company's workers. It was contended by the assessee that the said expenditure was incurred wholly and exclusively on the welfare of the employees and, therefore, constitutes legitimate business expenditure. The ITO and the AAC rejected the plea. The Tribunal, however, upheld the assessee's contention holding that the expenditure in question brought into existence no capital asset to the assessee-company as the tenements remained the property and the assets of the housing board. The assessee-company acquired no ownership rights in the said tenements, it held. The Tribunal found further that there was no obligation on the assessee-company to provide its workers tenements constructed by the housing board and that the benefit of better and cheaper housing in this case obtained by the industrial workers of the assessee-company did not constitute a direct benefit of an enduring nature to the assessee. The expenditure, it observed, was incurred merely with a view to carry on the business of the assessee-company more efficiently by having a contented labour force.

4. Dr. V. Gaurishankar, learned counsel for the Revenue, places strong reliance upon the decision of this Court in Travancore-Cochin Chemicals Ltd. vs. CIT (1977) 106 ITR 900 (SC). The facts of the case are the following : The assessee-company was receiving and despatching material required for its purposes through trucks. The approach road to its premises was not a pucca road and was causing difficulties and inconvenience on several occasions. Along with three other public undertakings, the assessee approached the Kerala Government for laying a new road to that area. While the Government bore the cost of acquisition of land and part of the cost of construction of the road, the remaining cost was met by the four companies including the assessee. The question was whether the said expenditure is allowable as a revenue expenditure. This Court held that by having the new road

constructed for the improvement of transport facilities, the appellant had acquired an enduring advantage for its business and, therefore, the expenditure incurred by the assessee was of a capital nature. Dr. Gauri Shankar says the principle of the said decision is equally applicable herein inasmuch as provision for better housing to the assessee's workers was ultimately a benefit-and an enduring benefit-to the assessee. On the other hand, the learned counsel for the assessee brought to our notice a later decision of this Court in L. H. Sugar Factory & Oil Mills (P) Ltd. vs. CIT (1980) 125 ITR 293 (SC) where after discussing the facts and the principle of the decision in Travancore Cochin Chemicals case (supra) it has been held that the ratio of the said decision must be confined to the peculiar facts of that case alone for reasons assigned in that behalf. The decision in L. H. Sugar Factory & Oil Mills case (supra) was also a case where certain expenditure was incurred towards part of the cost of construction of the roads in the area around the factory and it was held that it was a business expenditure. Our attention is also invited to an order of this Court in CIT vs. T. V. Sundaram Iyengar & Sons (P) Ltd. (1990) 186 ITR 276 (SC) wherein it has been held that the amount advanced by the assessee for construction of houses under a subsidised industrial scheme for its employees is in the nature of a revenue expenditure. In this case too, the amount was advanced to the Government which purchased the land in its own name and the buildings constructed thereon became property of the Government and not of the assessee. Having regard to the facts of the appeals before us and in the light of the findings recorded by the Tribunal we think that the principle of L. H. Sugar Factory & Oil Mills (supra) and CIT vs. T. V. Sundaram Iyengar & Sons (P) Ltd. (supra) is more appropriate than the principle in Travancore-Cochin Chemicals (supra).

5. We are, therefore, of the opinion that the High Court was justified in rejecting the application under s. 256(2) of the IT Act. The appeals are dismissed. No costs.