

ORISSA HIGH COURT

Commissioner of Income-Tax

Vs

Industry and Commerce Enterprises

SJC No. 207 of 1974

(R.N. Misra and N.K. Das, JJ.)

28.11.1975

JUDGMENT

R.N. Misra, J.

1. On an application of the revenue made under Section 256(1) of the I.T. Act of 1961 (hereinafter referred to as "the Act"), the Income-tax Appellate Tribunal has stated this case and referred the following question for opinion of the court :

Whether, on the facts and in the circumstances of the case, the loss of ₹ 27,420 sustained by the assessee on sale of Government Loan Bonds is capital loss or revenue loss ?

2. The assessee is a private limited company and the relevant assessment year is 1967-68. The company carries on business in sale of furniture in general and steel furniture of M/s. Godrej Company. During the relevant year it also commenced business of a rolling mill in Calcutta. During the assessment proceedings, the ITO noticed a claim of loss of ₹ 29,247 as arising from sales of Government Loan Bonds and other assets and while further scrutinizing the claim found that ₹ 27,420 was relatable to loss arising out of sale of Government Loan Bonds worth ₹ 3,67,884. The assessee took the stand that with a view to increasing its business with the State Government, it became necessary to purchase Government Loans and in support of such claim produced a letter from the Chief-Engineer of the Rural Engineering Organisation. The assessee failed to satisfy the ITO that the purchase of the Government Loan Bonds was a condition to securing purchase orders from the State Government. It was further found that the assessee was not dealing in Government Bonds and did not have any stock-in-trade. Accordingly he came, to the conclusion that the investment was of capital nature and loss therein could not be treated as revenue expenditure for computation of the assessee's total income. Accordingly, the claim of loss was disallowed.

3. The AAC sustained the rejection made by the ITO. The assessee's further appeal before the Tribunal was disposed of by a single member who held :

"In my view, it has been shown to my satisfaction that the loss is of revenue character. As the assessee had acquired the business from the Government by the purchase of the impugned securities although the letter written by the Chief Engineer did not speak of any condition precedent for the grant of the business to the assessee, looking to the attendant circumstances and the grant of the business to the assessee, there is no shade of doubt particularly because of the coincidence of the date of purchase and the business allotted to the assessee of the equal sum. This leaves no room for any suspicion that the business secured by the assessee was as a result of purchase of the securities and, therefore, direct nexus has been established. In this view of the matter, the addition is deleted as business expenditure."

4. Reliance has been placed by learned standing counsel on a decision of this court in the case of *Commissioner of Income Tax v. Patnaik and Co. (P.) Ltd.*¹. in support of his argument that where the venture is alien or new and a businessman loses, it cannot invariably be attributable to revenue on the ground of motive alone if, of course, the initial investment was of a capital nature conferring an enduring benefit on him and where the initial layout is an investment and of a capital nature, having no remote connection with its existing business, the resulting loss cannot be treated to be an admissible expenditure. We agree with the principle laid down in the aforesaid case but are afraid that the ultimate decision in this case must be taken to be one of fact. Admittedly, the letter of the Chief Engineer of the Rural Engineering Organisation (dated August 14, 1965) is prior to the investment in Government Loans as would appear from the appellate order of the Tribunal. There is a further finding that business was secured contemporaneously from the very department. This is not a case where the assessee claims that the loan bonds were purchased for any enduring return. On the other hand, the finding is that there is a boosting up in the business in the year itself. The link which was wanting in the reported decision of this court appears to have been found by the Tribunal as a fact. In these circumstances, there is no warrant for the contention of the learned standing counsel that the purchase of the Government Loan Bonds was in the nature of investment and, therefore, resulted in capital assets, loss wherein could not be admitted as revenue expenditure.

5. We would accordingly hold that, on the facts and in the circumstances of the case, the loss of ₹ 27,420 sustained by the assessee on the sale of Government Loan Bonds was a revenue loss.

6. We make no order as to costs, because the assessee went unrepresented at the time of hearing.

Das, J.

7. I agree.

Cases Referred.

¹[1979] 117 ITR 388 (Ori)