PATNA HIGH COURT

Commissioner of Income-tax

Vs

Darbhanga Sugar Co. Ltd

Misc. Judicial Case No. 304 of 1954

(Ramaswami and Imam, JJ.)

29.09.1955

JUDGMENT

Ramaswami, J.

1. In this case the assessee claimed before the income-tax authorities that a sum of Rs. 17,256/- was spent on machinery repairs and that the amount should be deducted from taxable income under Section 10(2)(v) of the Income-tax Act. According to the assessee, a sum of Rs. 4,200/- was spent for replacing a fire box for locomotive, a sum of Rs. 8,714/- for replacing a cast iron headstock for rollers and a sum of Rs. 4,336/- for purchase of a cast iron sublimer (for generating sulphur gas). It was claimed that these replacements were necessary because of fair wear and tear. The Income-tax Officer held that the deduction was not permissible. The assessee took an appeal to the Appellate Assistant Commissioner. It was contended on Assessee's behalf that the parts purchased were component parts of a larger plant and the replacement, was necessary because the parts had become worn out and that the replacement did not enhance the value of the machinery or change its identity. The contention was rejected by the Appellate Assistant Commissioner on the ground that the assessee was entitled to a deduction under Section 10(2)(v) only if the expenditure was "on petty repairs usually carried on periodically". In reaching this conclusion, the Appellate Assistant Commissioner relied upon a decision of the Allahabad High Court in - Re *'Ram Kishan Sunderlal v. Commissioner of Income Tax U.P[1].',* (A). The assessee preferred an appeal to the Income-tax Appellate Tribunal from the decision of the Appellate Assistant Commissioner. The appeal was allowed and the Income-tax Appellate Tribunal held that the assessee was entitled to the amount of deduction claimed from taxable income under Section 10(2)(v) of the Income-tax Act.

2. Under Section 66(1) of the Income-tax Act, the Income-tax Appellate Tribunal has formulated the following question of law for the opinion of the High Court :

> "Whether in the circumstances of this case the claim by the Assessee for deduction of the expenditure of Rs. 17,256/- in computing the assessable profits of the assessee is allowable tinder Section 10(2)(v) of the Indian Income-tax Act 1922 ?"

3. On behalf of the Income-tax Department, the Standing Counsel put forward the submission that the Income-tax Appellate Tribunal has taken an erroneous view of Section 10(2)(v) of the Income-tax Act and that the Assessee was not entitled to claim a deduction of Rs. 17,256/- in computing assessable profits for the accounting year in question. It was contended that Section 10(2)(v) only applied to petty repairs and that the view taken by the Allahabad High Court in 1951-19 ITR 324 (All) (A) was the right view. For the reasons which I shall presently state, I consider that the argument of the Standing Counsel is not sound. I also think with great respect that the view taken by the learned Judges of the Allahabad High Court in 1951-19 ITR 324 (All), is not the correct view. The question at issue turns on the proper interpretation of the expression "current repairs to such buildings, machinery, plant, or furniture" in Section 10(2)(v) of the Income-tax Act. What is the implication of the word "repair" and what is the implication of the word "current" ? I shall first take up the meaning of the word "repair". From the etymological stand point, the word "repair" is derived from old French 'reparer' which in its turn is derived from the Latin word 'reparare', which means "to make ready or to put in order". According to the New Oxford Dictionary, the word "repair" means "to restore to good condition by renewal or replacement of decayed or damaged parts" or "to renew or renovate some thing or part". In an English case, - *'Lurcott v. Wakely and Wheeler[2]',* a question arose as to the interpretation of a covenant between landlord and tenant which required the latter to "substantially repair and keep in thorough repair and good condition the demised premises." At page 923 Buckley, L.J. states :

> 'Repair' and 'renew' are not words expressive of a clear contrast. Repair always involves renewal; renewal of a part of a subordinate part. A skylight leaks; repair is effected by hacking out the putties, putting in new ones, and renewing the paint. A roof falls out of repair; the necessary work is to replace the decayed timbers by sound wood; to substitute sound tiles or slates for those which are cracked, broken, or are missing; to make good the flashings, and the light. Part of a garden wall tumbles down; repair is effected by building it up again with new mortar, and, so far as necessary, new bricks or stone.

Repair is restoration by renewal or replacement of subsidiary parts of a whole. Renewal, as distinguished from repair, is reconstruction of the entirety, meaning by the entirety not necessarily the whole but substantially the whole subject-matter under discussion. I agree that if repair of the whole subject-matter has become impossible a covenant to repair does not carry an obligation to renew or replace." It is therefore, clear that a renewal may be a repair or reconstruction. Renewal is repair only if it is restoration or replacement of subsidiary parts of the old machinery. If, on the other hand, there is replacement of the entire machinery or substantially the whole of it, there is no question of repair. The test, therefore, is whether the act of replacement is one which is in substance replacement of defective parts or replacement of the entire machinery or substantial part of the entire machinery. The decision' of Buckley, L.J. was not a decision under the Income-tax Act, but it was referred to with approval by the Judicial Committee in - *'Rhodesia Railways Ltd. v. Income-tax Collector, Bechuanaland[3]',* which was a case arising under the Income-tax Laws.
In that case there was a claim by the Railway company to deduct from its profits large amounts spent by it for renewal of 74 miles of railway track out of 394 miles of the total length of the track. The Bechuanaland Income-tax Proclamation under which the assessment was made had a provision that sums expended for the repairs of property occupied for the purpose of trade or in

respect of which income was receivable and sums expended for the repair of machinery, implements, utensils, and articles employed by the tax-payer for the purpose of his trade were permissible deductions.

The contention of the assessee was upheld by the Judicial Committee. At page 224, Lord Macmillan states : The periodical renewal by sections of the rails and sleepers of a railway line as they wear out by use is in no sense a reconstruction of the whole railway and is an ordinary incident of railway administration. The fact that the wear although continuous is not and cannot be made good annually does not render the work of renewal when it comes to be effected necessarily a capital charge. The expenditure here in question was incurred in consequence of the rails having been worn out in earning the income of previous years on which tax had been paid without deduction in respect of such wear, and represented the cost of restoring them to a state in which they could continue to earn income. It did not result in the creation of any new asset; it was incurred to maintain the appellants' existing line in a state to earn revenue. The analogy of a wasting asset which appears to have affected the minds of the Special Court has really no application to such a case as the present". On behalf of the Income-tax Department, Mr. R.J. Bahadur referred to a decision of Rowlatt, J. in. - *'O Grand v. Bullcroft Main Collieries Ltd[4].',* (D). In that case, the assessee had replaced a chimney which had become unsafe by a new chimney, erected on an adjacent site. The Company claimed as a deduction in computing its profits that part of the cost of the new chimney which was charged in year. It was held by the Special Commissioners that the replacement of the chimney was a replacement of a capital nature and that no part of the expenditure upon it could be allowed as deduction from taxable profits. The decision of the Special Commissioners was upheld by Rowlatt, J. who took the view that the new chimney was not a part of the factory but was an "entirety in itself." The decision of Rowlatt, J. in this case does not lay down any new principle and must be confined to the facts of that case. Actually, the case has been distinguished by the Court of Session in a later case, - *'Samuel Jones and Co. Ltd. v. Commissioners of Inland Revenue[5]',* (E). The decision of Rowlatt J. can be explained on the ground that its accounts for the corresponding accounting the new chimney put up by the assessee in that case was an improvement on the old chimney and was not identical with it. It appears from the statement of the case at page 96 that the old chimney was 170 feet high, with an average external diameter of 11 feet 11 inches and was made of Peterborough bricks; while the new chimney was 180 feet high its average external diameter was 17 feet 4 inches and was built of engineering bricks. I do not, therefore, think that this decision is of any assistance to the Income-tax Department in the present case. On the contrary, the decision reported in (1951) 32 Tax Cas 513 (E) supports the view that a chimney may be an integral part of the whole factory, and if the new chimney was not an improvement on the old chimney, the cost of replacement of the chimney would be an admissible deduction under Section 3(d) of the rules applicable to Cases I and II of Schedule D. Standing Counsel also referred to - *'Phillips v. Whieldon Sanitary Potteries Ltd[6].',* (F). In that case, the
Company in question manufactured pottery at a factory along side which ran a canal.

At one time the factory was separated from the canal by an embankment but this subsided and water seeped into the factory. A new barrier was built on the site of the old embankment. It was contended on behalf of the Company that the new barrier was a replacement of the old one and that the cost of its erection should be allowed as a deduction in computing the profits. This contention was rejected by the High Court on the ground that the new barrier could not be regarded as repair "of the premises for the purpose of rule 3(d)" and "having regard to the size and importance of the new barrier in relation to the factory as a whole" the barrier itself must be regarded as an entirety. It is obvious that the decision of Denovan, J. in (1952) 33 Tax Cas 213

(F) was given on the particular facts of that case and no principle of law can be extracted from that decision.

4. I shall next examine the meaning of the word "current" in Section 10(2)(v) of the Income-tax Act. According to the New Oxford Dictionary, the word "current" is derived from the Latin word 'currere' - "to run" and old French word 'corant', which is present participle of 'courir'. The word 'current', therefore, literally means 'running.'
According to the lexicographic meaning 'current' must be interpreted as 'running in time; belonging to the present time.' I, therefore, think that the expression 'current repairs to machinery' which occurs in Section 10(2)(v) must be interpreted to mean repairs to machinery in the current accounting year. In other words "current" is used in contradiction to past or arrear repairs. In the Madras case - *'Commissioner of Income-tax and Excess Profits Tax, Madras v. Rama Sugar Mills Ltd[7].',* Satyanarayana Rao, J. expressed a similar view with regard to the interpretation of Section 10(2) (v). The other learned Judge, Raghava Rao, J. held that the expression "current repairs" must denote expenditure on repairs to plant or machinery in a running condition and if the repairs are effected after the machinery or plant comes to a stand-still, they cannot be regarded as current repairs. I respectfully disagree with this view, for the expression which is used in Section 10(2)(v) is "current repairs to machinery" and not "repairs to current machinery". The interpretation given by Raghava Rao, J. is, therefore, contrary to the grammatical meaning of the language employed in Section 10(2)(v). I also disagree with-the view expressed by the learned Judges in the Allahabad case 1951-19 ITR 324 (All) (A). It was held in that case that the expression "current repairs" in Section 10(2)(v) must be interpreted to mean "petty recurring expenditure." There is nothing in Section 10(2)(v) to suggest that the expenditure on repairs cannot be allowed as a proper deduction if the repairs are not petty. I do not understand how the word "current" can be interpreted to mean "petty". Section 10(2)(v) does not say anything about the magnitude of the expenditure. I, therefore, think that the decision of the Allahabad High Court unduly restricts the scope of the language employed in Section 10(2)(v).

5. In the present case, the Appellate Tribunal has found that the fire box for locomotive was purchased for Rs. 4,200/-, Rs. 8,714/- was spent on cast iron head-stock for rollers and Rs. 4,336/- was spent in purchasing cast iron sublimer (for generating sulphur gas). The Appellate Tribunal also states that these are components of machinery units costing respectively Rs. 62,666/-, Rs. 1,06,000/- and Rs. 37,000/-.
In other words, the parts replaced in place of those worn out cost approximately seven
or eight per cent of the entire machinery in the first two items and about eleven per cent in the third item. The Income-tax Appellate Tribunal has also said that there was no case of renewal of the entire machinery and the replacement of the worn out parts did not bring any new value to the machinery or changed its identity. In view of the interpretation I have placed upon Section 10(2)(v) of the Income-tax Act, I am clearly of opinion that the expenditure of Rs. 17,256/- on machinery repairs should be deducted in computing the assessable profits of the assessee in the circumstances of this case.

6. I would accordingly answer the question referred to the High Court against the Income-tax Department and in favor of the assessee. The Income-tax Department must pay the costs of this reference. Hearing fee Rs. 250/-.

Imam, J.

7. I agree.

Reference answered.

Cases Referred.

[1]1951-19 ITR 324 (All)
[2](1911) 1 KB 905
[3] AIR 1933 PC 222
[4]1932-17 Tax Cas 93
[5](1951) 32 Tax Cas 513
[6](1952) 33 Tax Cas 213
[7] AIR 1952 Mad 689