

**(1977) 01 GAU CK 0004****Gauhati High Court****Case No:** Income-tax Reference No. 40 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Abhoyjan Tea Estate (P.) Ltd.

RESPONDENT

**Date of Decision:** Jan. 18, 1977**Acts Referred:**

- Income Tax Act, 1961 - Section 37

**Citation:** (1977) 110 ITR 251**Hon'ble Judges:** M.C. Pathak, C.J; N. Ibotombi, J**Bench:** Division Bench**Advocate:** G.K. Talukdar and D.K. Talukdar, for the Appellant; M.L. Barjatya, for the Respondent**Judgement**

Pathak, C.J.

The following question of law has been referred to this court for decision by the Income Tax Appellate Tribunal, Gauhati Bench, u/s 256(1) of the Income Tax Act, 1961, hereinafter referred to as " the Act " :

" Whether, on the facts and in the circumstances of the case, the Tribunal was justified in allowing the interest paid to the State Bank of India, the court expenses and the travelling expenses incurred for acquiring Phookanbari Tea Estate even though the transaction did not ultimately materialise ? "

2. The facts of the case may be briefly stated as follows : The assessee is a company carrying on business of growing and manufacturing tea. The assessment year concerned is 1969-70. A tea garden, known as Phookanbari Tea Estate, was sold at an auction sale. The bid of the assessee was accepted and it was required to deposit 25% of the bid money, immediately on the close of the bid. The assessee could not deposit this amount immediately and took some time for depositing the same from the court. The assessee then took a loan of Rs. 2,38,000 from the State Bank of India against its fixed deposits and deposited this amount with the court against the bid

money. The auction sale was, however, challenged by the owners of Phookanbari Tea Estate and the sale was ultimately set aside. The amount paid by the assessee was accordingly refunded. But the assessee had paid Rs. 10,692 as interest on the loan taken from the State Bank of India. In the assessment order the Income Tax Officer held that this amount of interest paid by the assessee was a capital expenditure and so he disallowed the same. The assessee had also incurred travelling expenses of Rs. 1,000 and litigation expenses of Rs. 1,807 in connection with the transaction of purchase of the Phookanbari Tea Estate. These expenses were also held to be capital expenditure and the Income Tax Officer disallowed them in computation of the assessee's total income.

3. The order, of the Income Tax Officer was challenged by the assessee before the Appellate Assistant Commissioner in appeal. The Appellate Assistant Commissioner held that the interest paid by the assessee was an allowable expenditure. He also held that the litigation expenses and the travelling expenses were also incurred for keeping the asset acquired by the company and were allowable.

4. The department then preferred an appeal from the order of the Appellate Assistant Commissioner before the Tribunal. The Tribunal considered the materials on record and rejected the appeal of the department.

5. On the above facts, the abovementioned question of law has been referred.

6. We have perused the order of the Tribunal and the question of law framed. In its order the Tribunal has observed as follows :

"During the accounting year, the loan was taken for the purpose of the assessee's business, i.e., acquisition of another tea estate. In the subsequent year he was not able to get the sale confirmed but that does not alter the character of the earlier transaction. The second point made by the learned departmental representative is that there is no ground to hold that Phookanbari Tea Estate business would be the same business as the other business of the assessee. In other words the contention is that these two are separate businesses. We find that there is no material before us to hold that these are separate businesses. On the other hand, the *prima facie* case is that the business is the same. The loan has been taken by pledging the business assets. In the accounts the interest, travelling expenses, had been debited under the same head. They appear to be under one unit of management and control. We will, therefore, hold that it is not possible to say that it is a separate business."

7. From the order of the Tribunal it is quite clear that the assessee is a company which carries on business of growing and manufacturing tea. It purchased in auction sale the Phookanbari Tea Estate, apparently to expand its tea business. Though, ultimately, the sale was set aside at the instance of the owners of the Phookanbari Tea Estate, the transaction entered into by the assessee in purchasing Phookanbari Tea Estate was made in execution or rather in expansion of its tea

business. The Tribunal has also found that there is one unit of management and control and the business of the assessee cannot be said to be separate from the business that the assessee sought to enter into by purchasing Phookanbari Tea Estate. That being so, the interest on the loan that was taken for purchasing Phookanbari Tea Estate must be held to be a revenue expenditure. Similarly, the travelling expenses and litigation expenses incurred in connection with the, purchase of Phookanbari Tea Estate have also to be held as revenue expenditure.

8. In the result, we find that, on the facts and in the circumstances of the case, the Tribunal was justified in allowing the interest paid to the State Bank of India, the court expenses and the travelling expenses incurred for acquiring Phookanbari Tea Estate even though the transaction did not ultimately materialise.

9. We would like to observe that the Tribunal has correctly followed the principles laid down by the Supreme Court in [State of Madras Vs. G.J. Coelho,](#)

10. We, accordingly, answer the question of law referred in the affirmative and against the department.

11. The reference is accordingly disposed of. There will be no order as to costs.

N. Ibotombi Singh, J.

12. I agree.