

Travancore-cochin Chemicals Ltd. Vs Commissioner of Income Tax, Kerala

Court: Supreme Court of India

Date of Decision: Jan. 21, 1977

Acts Referred: Income Tax Act, 1961 " Section 37(1)

Citation: AIR 1977 SC 991 : (1977) 106 ITR 900 : (1977) KLT 191 : (1977) SCC 258 : (1977) 2 SCC 20 : (1977) 2 SCR 715 : (1977) 9 UJ 136

Hon'ble Judges: R. S. Sarkaria, J; H. R. Khanna, J; A. C. Gupta, J

Bench: Full Bench

Final Decision: dismissed

Judgement

A.C. Gupta, J.

The question for decision in this case is whether the money contributed by the assessee, a public limited company, for the

construction of a new road in the area where its factory is located to improve transport facilities is capital expenditure or revenue expenditure. The

assessment year in question is 1964-65, the relevant accounting period being in the financial year ended March 31, 1964. The assessee company

is engaged in the manufacture of chemicals; it has been receiving and despatching materials required for and produced in its factory through lorries.

The assessee along with there other public undertakings approached the Government of Kerala for laying a new road from Kalamasseri to

Udyogmandal; this area where the assessee's factory is situate was not at the material time served by pucca roads. It was agreed that the

Government of Kerala would bear the cost of the acquisition of the land and 25 per cent of the cost of construction. The total cost to be shared by

the four companies was Rs. 1,04,550/ and the assessee's share came to Rs. 26,100/-. The assessee company sought to deduct this amount from

its total income claiming this as revenue expenditure for the year in question. The income tax Officer disallowed the claim holding that the

assessee's contribution was capital expenditure. The appellate Assistant Commissioner took the same view. The Appellate Tribunal, mainly relying

on the decision of the Calcutta High Court in Commiisioner of income tax v. Hindustan Motors Limited (1368) 68 ITR 301 held that the asses

see was entitled to deduct the amount as revenue expenditure. At the instance of the Commissioner of income tax, Kerala, Ernakulam, the Tribunal

referred the following question to the High Court of Kerala u/s 256(1) of the income tax Act, 1961:

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was legally justified in allowing the expenditure of Rs. 26,100/-

being the respondent's contribution to government for constructing a road as a permissible deduction u/s 37(1) of the income tax Act, 1961.

The High Court held that the assessee in this case obtained an advantage of an enduring nature by the construction of the road and, therefore, the

amount contributed was capital expenditure. The High Court accordingly answered the question in negative and against the assessee. In this

appeal, brought on a certificate u/s 261 of the income tax Act, 1961, the assessee challenges the correctness of the answer given by the High

Court to the question.

2. The authorities both in this country and in England have pointed out the difficulties in formulating precise rules for distinguishing capital

expenditure from revenue expenditure. The line of demarcation has been found to be very thin. Certain broad tests have however been laid down,

and of them the test suggested by Viscount Cave, L.C., in *Atherton v. British Insulated and Helaby Cables Limited* (1925) 10 Tax Cas 155

appears to have been largely accepted in this country. This Court in 279932, *Sitalpur Sugar Works Limited v. Commissioner of income tax, Bihar*

& Orissa (1903) 49 ITR 160 and a number of other decisions has adopted the test as laid down in *Atherlon's* case; to refer again to these often

quoted lines from Viscount Cave's judgment, "when an expenditure is made...with a view to bringing into existence an asset or an advantage for

the enduring benefit of a trade. I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for

treating such an expenditure as properly attributable not to revenue but to capital". Referring to *Ahterton's* case and certain other authorities on the

distinction between capital expenditure and revenue expenditure and the tests to be applied, this Court in *Assam Bengal Company Limited v.*

Commissioner of income tax observed:

If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly

attributable to capital and is of the nature of capital expenditure. Of on the other hand it is made not for the purpose of bringing into existence any

such asset or advantage but for running the business or working it with a view to produce the profits it is a revenue expenditure. If any such asset

or advantage for the enduring benefit of the business is thus acquired or brought into existence it would be immaterial whether the source of the

payment was the capital or the income of the concern or whether the payment was made once and for all or was made periodically, the aim and

object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. The source

or the manner of the payment would then be of no consequence. It is only in those cases where this test is of no avail that one may go to the test of

fixed or circulating capital and consider whether the expenditure incurred was part of the fixed capital of the business or part of its circulating

capital. If it was part of the fixed capital of business it would be of the nature of capital expenditure and if it was part of its circulating capital it

would be of the nature of revenue expenditure.

In the case before us, the High Court applied Viscount Cave's test and found that the expenditure made by the assessee brought into existence an

advantage for the enduring benefit of the assessee's trade and accordingly held that this was capital expenditure.

3. Each case turns on its own facts. It is not disputed here that the correct test has been applied. Did the money spent by the assessee on

construction of the new road secure for it an enduring benefit, or was it necessary for running its business? On the facts of the case the position

seems to us clear enough not to merit an elaborate consideration, that by having the new road constructed for the improvement of transport

facilities, the assessee acquired an enduring advantage for its business. The High Court rightly pointed out that the decision of the Calcutta High

Court in Commissioner of Income tax v. Hindustan Motors Ltd. on which the appellate tribunal relied, is clearly distinguishable on facts; that was a

case where the expenditure incurred was for repair of an existing road which is different from the case where a new road is laid out for the purpose

of the assessee's business. Mr. Pai, learned Counsel for the appellant, has relied on the decision of this Court in 270605 to contend that even the

expenditure on the construction of roads could be revenue expenditure and not expenditure of a capital nature. In Lakshmiji Sugar Mills case the

assessee was a private limited company carrying on the business of manufacture and sale of sugar. Under the provisions of the U.P. Sugarcane

Regulation of Supply and Purchase Act, 1953, the assessee company was obliged to contribute certain amount for the development of roads

which were originally the property of the government and remained so even after the improvement had been made.

4. Apart from the fact that in this case the expenditure incurred was under a statutory compulsion, there was no finding that the roads were newly

made. On the facts of that case this Court was satisfied that the development of the roads was meant for facilitating the carrying on of the

assessee's business. Lakshmiji Sugar Mills case is quite different on facts from the one before us and must be confined to the peculiar facts of that

case. On the facts of the instant case, we have no doubt that the expenditure incurred by the assessee was of a capital nature. The appeal

accordingly fails and is dismissed but in the circumstances of the case without any order as to costs.