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Calcutta High Court

Case No: IT Ref. No. 221 of 1983

COMMISSIONER OF INCOME TAX		APPELLANT
	Vs	
HINDUSTHAN SANITARYWARE and INDUSTRIES LIMITED.		RESPONDENT

Date of Decision: Aug. 14, 1989

Citation: (1992) 106 CTR 268

Hon'ble Judges: Suhas Chandra Sen, J; Bhagabati Prasad Banerjee, J

Bench: Full Bench

Judgement

BHAGABATI PRASAD BANERJEE, J. :

The following two questions of law have been referred to this Court by the Tribunal under s. 256(1) of the IT Act, 1961 :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the replacement cost of the petrol engine by diesel engine of the jeep should be treated as revenue expenditure and not as capital expenditure ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that extra shift allowance on generator is allowable even though there is no specific provision in the IT Rules ?"

2. The assessment year involved in this reference is the asst. yr. 1977-78, for which the relevant period of account is the ended on 31st March, 1977.

3. So far as the second question is concerned, it is concluded by the decision of this Court in IT Ref. No. 171 of 1983 (Hindustan Sanitaryware & Industries Ltd. vs. CIT) judgment in which delivered today. In view of the said decision, the question is answered in the affirmative and in favour of the Revenue.

4. With regard to the first question, the dispute is whether the replacement cost of a petrol engine by a diesel engine of a jeep should be treated as revenue expenditure and not as capital expenditure. This is not disputed that by replacing the petrol engine in the jeep no new asset has been brought into existence but possibly the functioning of the jeep has been made economical on the part of the management, in getting the service of the engine with diesel, which will reduce the running expenses no doubt to some extent of the business. As such it is part of the profit making process.

The same view has already been taken by the Gujarat High Court in the case of Additional Commissioner of Income Tax, Gujarat Vs. Desai Bros., . We respectfully agree with the view taken in that case and the first question must also be answered in the affirmative and in favour of the assessee.

5. In the above circumstances, question No. 2 is answered in the affirmative and in favour of the Revenue and question No. 1 is answered in the affirmative and in favour of the assessee.

There will be no order as to costs.

SUHAS CHANDRA SEN, J. :

I agree.