(1967) 09 CAL CK 0002

Calcutta High Court

Case No: Income-tax Reference No. 20 of 1964

COMMISSIONER OF Income Tax, WEST BENGAL		APPELLANT
	Vs	
HINDUSTHAN MOTORS LTD.		RESPONDENT

Date of Decision: Sept. 1, 1967

Acts Referred:

- Income Tax Act, 1922 - Section 10(2)(xv), 66(1)

Citation: (1969) 1 ILR (Cal) 365 : (1968) 68 ITR 301

Hon'ble Judges: K. L. Roy, J; Banerjee, J

Bench: Full Bench

Judgement

BANERJEE J. - This reference, u/s 66(1) of the Indian Income Tax Act, 1922, has been made under circumstances hereinafter related.

The assessee is a manufacture of motor cars and has a factory within the territorial limits of Kotrang Municipality. The location of the factory is a little distance away from the Grand Trunk Road. There is an approach road from the Grand Trunk Road to the factory premises of the assessee which road belongs to the Government of West Bengal. The said approach road fell into disrepair and began to cause transportation difficulties to the assessee. The Government was not prepared to meet the expenses for the repair of the road. Thereupon, the assessee offered to contribute a sum of Rs. 39,770, namely, the amount necessary for improvement of the said approach road. The offer was accepted by the Government. Thereafter, there was a formal written agreement dated August 14, 1959, made between the Government and the assessee under the terms whereof :

(1) the sum of Rs. 39,770 was to be spent for the improvement of the approach road and not for usual repairs;

(2) in consideration of the sum being advanced by the assessee, Government would undertake to keep the said road in proper repairs.

The assessee paid the said amount to the Government and in its return of income, for the assessment year 1956-57 (the relevant previous year being the year ending on March 31, 1956), claimed the amount as expenditure deductible u/s 10(2) (xv) of the Indian Income Tax Act.

The Income Tax Officer treated the expenditure as capital expenditure and disallowed the claim for deduction. On appeal by the assessee, the order of the Income Tax Officer, in this respect, was affirmed by the Appellate Assistant Commissioner. Thereupon, the assessee preferred a second appeal before the Appellate Tribunal, which allowed the appeal with the following observation :

"In our opinion, the expenditure cannot be a capital expenditure. The assessee, as we have stated above, was not the owner of the road and the improvement which was being made was being done by the Government. The assessee of course contributed towards the costs and expenses for the improvement of the road but the enduring benefit, if at all, went to the owner of the road and not to the assessee. The only benefit which accrued to the assessee was that the road got improved and could now be used well by it for its business purposes. Thus no capital asset having been built up by the expenditure, it could not be called a capital expenditure. This finding of ours, however, does not dispose of the question in issue before us. We have still got to see whether the amounts is allowable as a business expenditure u/s 10(2) (xv) of the Income Tax Act.....

In our opinion, the contention laid on behalf of the assessee must be upheld. In order to ascertain whether an expenditure has been incurred wholly and exclusively for the purposes of business, one must look to the direct concern and direct purpose for which the money is laid out. It is always possible that the expenditure while benefiting the assessee may confer equal benefits on other person also. This, however, will not change the character of the expenditure incurred by the assessee, if the same had been expended solely with a view to benefit the carrying on of his business. The purpose must be the purpose of the assessees own business and the expenditure must have been incurred for that purpose. On the facts, as we have stated above, it is clear that the assessee spent that money not with any idea of benevolence but with a clear purpose before it, namely, to facilitate the transport of the cars manufactured in its factory. It is true that the assessee was not under any legal obligation to improve or repair the road; this, however, is no criterion for judging the issue before us. A sum of money expended even if not by necessity but voluntarily, but if the same facilitated the carrying on of the assessees business, it was surely an expenditure wholly and exclusively incurred for the purpose of the business. In this view of the matter, in our opinion, the sum of Rs. 39,770 was spent wholly and exclusively for business and therefore must be allowed as a deduction from the profits of the assessee."

Aggrieved by the order, the revenue induced the Tribunal to refer the following question of law to this court :

"Whether, on the facts and in the circumstances of the case, the sum of Rs. 39,770 was an allowable expenses within the meaning of section 10(2) (xv) of the Indian Income Tax Act, 1922 ?"

The distinction between revenue expenditure and expenditure on capital is often very thin and difficult of decision. In this reference, this difficulty has been exploited with very great ability by the learned counsel for the parties. Mr. D. Gupta, learned counsel for the revenue, submitted that the Tribunal went wrong in thinking that because the approach road belonged to the Government and by improvement of the road no capital asset of enduring benefit accrued to the assessee, the expenditure cannot be a capital expenditure. According to him, the improvement of the road resulted in an advantage of enduring benefit to the assessee, inasmuch as it solved the transportation difficulties of the assessee, and as such the expenditure should be treated as capital expenditure. It was not necessary, according to Mr. Gupta, that the expenditure must bring into existence a capital asset to the assessee; if the expenditure brought into the existence a capital advantage of enduring benefit to the assessee, he submitted, the expenditure should be capital expenditure. In support of this submission, he relied upon the following statement of law by the Supreme Court in Assam Bengal Cement Co. Ltd. v. Commissioner of Income Tax :

"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. If, on the other hand, it is made not for the purpose of bringing into existence any such asset or advantage but nor running the business or working in with a view to produce the profits, it is a revenue expenditure. If any such assets 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 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 is 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 of part of its circulating capital If it was part of the fixed capital of the business it would be of the nature of capital expenditure and if is was part of its circulating capital it would be of the nature of revenue expenditure. These tests are thus mutually exclusive and have to be applied to the facts of each particular case in the manner above indicated."

Illustrative of what he wanted to submit, Mr. Gupta relied on a decision of the Court of Session (Scotland) in A. G. Moore & Co. v. Hare (Surveyor of Taxes). What happened in that case was that for some years there was feud between a certain

body of traders including the assessee and the North British Railway Company. The warfare sprang from familiar causes - too high rates, too few wagons, excessive demands for demurrage, denial of the traders claim to have their own wagons on the railway line, and refusal of facilities generally. Dissatisfied with the remedy which the law afforded, namely, of applying to the Railway Commissioners and driven to exasperation by the alleged obduracy of the railway company, the traders, resolved on a bold step, namely, that they would contract a line of railway for themselves between the Lothians coal-field and Leith and so render themselves independent of the railway company altogether. Accordingly, the traders promoted two private Bills to attain that object. Both the Bills were thrown out, but the money expended upon them was not thrown away; it attained its end and the menace was sufficient and successful. The railway company, according to the assessee, were brought to their senses and the immediate result of this legislative misadventure was to secure for the traders, all the railway facilities which they desired. The railway company promised, in consequence of this menace, to construct a new line from the Lothians coal-field to Leith, to be dedicated to mineral goods traffic only and to give the traders an unlimited right to place their own wagons on that line. Since this triumph was, according to the appellants, honestly bought and paid for, the question arose whether the sum spent in promotion of the two abortive Bills were to be treated as capital expenditure or allowable as expenditure out of revenue. In holding that the expenditure was capital expenditure, the Lord President observed :

"I have not doubt for my part that it is capital expenditure because the money was used to buy for the traders, including the Appellants, a better and cheaper access to their customers, and it was therefore, in my opinion, just as much capital expenditure as if it had been spent in constructing a fresh line of railway for the purpose of the reaching their customers and disposing more conveniently and more cheaply to themselves of their coal. It is not every day that even an enterprising body of traders constructs a line of railway or promotes a Bill for that purpose, and accordingly it appears to me that this is a case to which the round-and-ready test suggested by Lord President Dunedin in the Vallambrosa case very singularly fitly applies. Capital expenditure, the Lord President said, is a thing that is going to be spent once and for all and income expenditure is a thing that is going to recur every year. Now, this Pounds 360 spent on buying for the Appellants and access to their customers is certainly a sum which was spent one for all, and is not a thing that is going to recur every year, and therefore it appears to me that, applying this rough-and-ready test - for Lord Dunedin did not claim any higher merit for it that - the sum of Pounds 360 in question here seems to me to be singularly clearly an item capital expenditure and no an expenditure out of revenue."

Mr. Gupta rounded up this branch of his argument with the submission that the sum of Rs. 39,770 contributed by the assessee for improvement of the approach road was as much capital expenditure as if the assessee had a better road constructed for transportation of goods manufactured at the assessees factory

more conveniently and more cheaply.

Mr. Shankar Ghose, learned counsel for the assessee, tried to repel the contention advanced on behalf of the revenue by placing strong reliance on a Privy Council decision in Rhodesia Railways Ltd. v. Income Tax Collector, Bechuanaland Protectorate. What happened in the case that the assessee owned a railway of which 394 miles ran through the Bechuanaland Protectorate. In making a return for the profits derived for the year of assessment, the assessee debited a sum of Pounds 2,52,174 under the heading "Renewals of Permanent way", thereby bringing out a loss for the year. The Income Tax authority disallowed the deduction. The track was laid down in 1896-97 and was maintained in the ordinary way, but in 1929, the track was in a worn and dangerous state requiring heavy repairs beyond what could be dealt in the ordinary way, and in 1930, new rails had to be put in over a large part of the track and new sleepers, which did not more than bring the track back to normal conditions but did not render the line capable of giving more service. Question arose whether the outgoing was of a capital nature and whether the work was one of reconstruction and no of repair. In answering the question, Lord Macmillan observed :

"..... the sum in question was within the meaning of paragraph (a) an outgoing not of capital nature and was expended for the repairs of property occupied for the purpose of trade or in respect of which income is receivable within the meaning of paragraph (b)....."Repair" and "renew" are not words expressive of a clear contracts and 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 would but substantially the whole subject-matter under discussion. The periodical renewal by sections of the rails or sleepers of railway line as they were 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 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 paid 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 state to earn revenue."

He also relied on the case of Dumbarton Harbour Board v. Cox (Surveyor of Taxes). In that case Harbour Board entrusted by statute with the duty of maintaining a harbour, which included a part of river bed depended to give access to ships erected on the bank, expended under contract in a year large sums money on dredging out accumulate silt from the river bed. The appellant claimed, in the computation of Income Tax, (a) an allowance for wear and tear of plant under the Customs and

Inland Revenue Act, 1887, section 12, and Finance Act, 1907, section 26(3) and (4), on the ground that the silting up of the harbour constituted wear and tear of the plant of their concern, or alternatively, (b) a deduction for repairs of premises on the basis of the average of the expenditure in the three preceding Income Tax years. It was held that the harbour was not plant nor was the silting wear and tear within section 12 of the Customs and Inland Revenue Act, 1887, and (b) that the application of rule 3 of Case 1, Schedule D, contended for by the appellant, was inconsistent with No. III of Schedule A, and hat in so far as the expenditure incurred in removing the sit was admissible as an expenditure on "repairs of premises", it fell to be deducted from the earning of the harbour in the year in which it was actually incurred, and that for Income Tax purpose not part of it could be set against earning in any other year.

In our opinion, the Scottish case relied upon by the learned counsel for the revenue, namely, A. G. Moores case, is clearly distinguishable. That was a case in which the assessee was trying to bring into existence new capital assets, namely, a fresh line of railway for the purpose of reaching the customers and the money was going to be spent "once and for all" on that account. The two abortive private Bills were promoted to that end in view. In the instant case, the facts are entirely different. The two cases relied on by the learned counsel for the assessee, namely, Rhodesai Railways Ltd.s case and Dumbarton Harbour Boards case are also distinguishable cases. In those cases, money was being spent to improve the own property of the assessee. Here, in this case, the approach road did not belong to the assessee but to the Government. Over it, the assessee had and did always have the right of way, as much as so many others had. The duty of keeping the roads passable was upon the Government. By government neglect, the road fell into a state of disrepair and was causing inconvenience to the assessee and also to so many other passersby. The Government could not be induced to take up the improvement of the road without necessary monetary contribution by the assessee. This inducement the assessee offered and paid Rs. 39,770. The motive behind the payments was to do away with the inconvenience of disrepair road, which should have been kept in repair by the Government as part of civilised administration. The money was spent not so much to bring about any asset or advantage of enduring benefit to itself but to run the business efficiently and conveniently, that is to say, by not being hampered by slow and possibly dangerous locomotion of cars, produced in the factory, while moving on a disreparied and ill-conditioned road. As a matter of business prudence, there was justification on the part of the assessee to expend this amount so as to induce the Government to repair the road, which it could not itself repair, not being the owner of the road. The expenditure sought thus to be treated as wholly and exclusively spent for the assessees business within the meaning of section 10(2) (xv). If the road was the own road of the assessee, Mr. Gupta, in his fairness did not dispute, the annual expenditure for its repair would have been revenue expenditure. We do not think that because the road was not its own, the moneys spent for inducting the owner of the road to repair the same would turn out to be

capital expenditure. The road should have been kept in reasonable repair by the Government. If a country be such, that a Government would not discharge its obvious duty of keeping roads and pathways in reasonable repair but for inducement, a businessman would have to reconcile itself with the state of affairs and incur such expenditure as the prevailing circumstances in the contrary may demand, so as to be able to carry on its own business efficiently.

It was not for nothing that the Supreme Court observed in the case of Assam Bengal Cement Co. that in the great diversity of human affairs and the complicated nature of business operations, it is difficult to lay down a test which would apply to all situations. One has, therefore, got to apply these criteria one after the other from the business point of view and cone to the conclusion whether on a fair appreciation of the whole situation the expenditure incurred in a particular case is of the nature of capital expenditure or revenue expenditure.

On the overall appreciation of the facts of this case, we are satisfied that the expenditure was incurred by the assessee, as a prudent businessman, to induce an otherwise unwilling Government to perform its obvious duty of keeping communication lines in reasonable state of repair and save trouble for itself, in the carriage of its own business.

Mr. Gupta lastly contended that the right of way over a road was itself a property or an asset and the moneys spent for bringing improvement of such a road was money spent to bring about an improvement in capital assets. He could not convince us that the right of way over a public road was such a Jura in re aliena as constitute a property. We do not, therefore, make much of this argument.

Before we close, we need dispose of another argument of Mr. Ghosh. He submitted that even if by capital expenditure an asset need not be brought into existence and it would suffice if a capital advantage only came in to being, such an advantage must be in the nature of a rig, incorporeal though it may be. This contention was negatived by Supreme Court in the case of Sitalpur Sugar Mills Ltd. v. Commissioner of Income Tax in the following language :

"Mr. Pathak did not question the authority of the test laid down in Athertons case but said that that test had no application in the present case as it would not apply unless by the expenditure a material asset or a covenant or right in the nature of capital was acquired. We find neither principle nor authority to support this contention."

In the view that we take, we answer the question referred to this court in the affirmative and in favour of the assessee.

The Commissioner of Income Tax must pay costs of this reference to the assessee.

K. L. Roy J. - I agree.