courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 20/10/2025

COMMISSIONER OF Income Tax Vs HINDUSTHAN ALUMINIUM CORPORATION LTD.

Income-tax Reference No. 215 of 1977

Court: Calcutta High Court

Date of Decision: Aug. 9, 1988

Acts Referred:
Income Tax Act, 1961 â€" Section 256(1), 261

Citation: (1990) 184 ITR 140 : (1990) 49 TAXMAN 279

Hon'ble Judges: K. M. Yusuf, J; Ajit K. Sengupta, J; Ajit K. Sen Gupta, J

Bench: Full Bench

Judgement

AJIT K. SENGUPTA J. - This application has been made by the Commissioner of Income Tax for leave to appeal before the Supreme Court u/s

261 of the Income Tax Act, 1961. The facts are that the assessee is a c company engaged in aluminium industry. During the accounting years

Ã¯Â¿Â½relevant to the assessment years 1965-66 to 1969-70, the assessee incurred expenditure of Rs. 3,07,865, Rs. 3,26,067, Rs. 5,53,765, Rs.

2,47,665 and Rs. 6,922, respectively, under the head ""Prospecting and investigation expenses"" and claimed the same as revenue expenditure. The

Income Tax Officer, however, disallowed the assessees claim.

Being aggrieved by the said order of the Revenue, the assessee filed an application u/s 256(1) of the Income Tax Act, 1961. Upon the said

application, the Income Tax Appellate Tribunal, Calcutta, by its order dated March 23, 1977, referred the following question to the High Court at

Calcutta :

Whether, on the facts and in the circumstance of the case, the Tribunal was justified in law in holding that the expenses incurred in each of the year

under reference on prospecting and investigating bauxite mines were in the nature of capital expenditure and, therefore, not allowable as deduction

u/s 37 of the Income Tax Act, 1961 ?

The said Income Tax Reference being No. 215 of 1977 (sic) came up for hearing before Mr. Justice Depict Kumar See (as his Lordship then was

and Mrs. Justice Manjula Rose, who by their judgment dated July 22, 1986 (sic), answer the question in favour of the assessee following the

earlier order made in Income Tax Reference No. 62 of 1977 dated January 7, 1986. Hindusthan Aluminium Corporation Ltd. Vs. Commissioner

of Income Tax, .

It may be mentioned that the Division Bench in answering the question in favour of the assessee in that case relied on the judgment in the case of

Hindusthan Aluminium Corporation Ltd. Vs. Commissioner of Income Tax, . There, the Division Bench, in answering the identical question in

favour of the assessee, held as follows (at page 675) :

In regard to the first question. The Tribunal held that the expenditure incurred by the assessee in prospecting and searching for bauxite mines was

not incurred in connection with nearing profit but was incurred only with a view to finding out the source from where the assessee could get raw

material for its aluminium plant which was yet in the construction stage. Construction of the plant had been completed and production actually

started on May 14, 1962. It was not quite correct to say that this expenditure was incurred in its entirely during the construction stage or prior to

the production stage. A part of it was undoubtedly spent subsequently. Bauxite was the raw material for the aluminium plant established in the

assessees factory, it was its stock-in-trade. The expenditure was incurred in order to enable the assessee to prospect and search for its stock-in-

trade. This expenditure could not be said to have been incurred with a view to obtain an asset of enduring nature. It was linked up and connected

with the production, i.e., for earning profits at the factory. It was, in our opinion, allowable as revenue expenditure. It was not in the nature of

capital expenses"".

In our view, the question whether the expenses incurred for prospecting and investigating bauxite mines are in the nature of capital expenditure, is a

substantial question of law and as it will occurs in many other cases like this, it should be decided once for all by the Supreme Ã¯Â¿Â½Court.

Accordingly, we are of the view that it is a fit case for appeal to the Supreme Court u/s 261 of the Income Tax Act, 1961, on the following

substantial questions of law :

(i) Whether prospecting and investigating expenses incurred before commencement of business to find out the source of raw material are capital

or revenue in nature ?

(ii) Whether expenses on prospecting and investigation incurred at the pre-production stage for the purpose of quality and quantum of raw

materials available are to be treated as revenue expenditure. ?

(iii) Whether in case the expenditure is incurred for the purpose of creating an advantage for more beneficial running of the business with a view to

producing better profits, it is not material to consider whether the expenses were incurred at the pre-production or post-production stage ?

For the reasons aforesaid, the application is allowed. It is certified that it is a fir case for appeal to the Supreme Court. Let a certificate be issued

accordingly.

K. M. YUSUF J. - I agree.