(1991) 04 CAL CK 0045

Calcutta High Court

Case No: IT Reference No. 22 of 1980

Indian Aluminium Co. Ltd.		APPELLANT
	Vs	
Commissioner of Income Tax		RESPONDENT

Date of Decision: April 8, 1991

Acts Referred:

- Income Tax Act, 1961 - Section 256(1), 261

Citation: (1994) 76 TAXMAN 275

Hon'ble Judges: Shyamal Kumar Sen, J; Ajit K. Sengupta, J

Bench: Division Bench

Advocate: D. Pal and Miss M. Seal, for the Appellant;A.C. Moitra and B.D. Haider, for the Respondent

Final Decision: Dismissed

Judgement

Sengupta, J.
This is an application u/s 261 of the income tax Act, 1961 (''the Act'') for leave to appeal to the Supreme Court against the judgment and order dated 11-9-1989. The question of law which was referred to this Court u/s 256(1) of the Act, is as follows :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the expenditure of Rs. 20,00,598 could not be allowed as a revenue expenditure as it represented an expenditure of capital nature ?

Shortly stated, the facts leading to this reference as recorded in the judgment are as follows:

The facts found by the Tribunal as stated in the statement of case are as under:

Before the ITO, the assessee claimed a deduction of Rs. 20,00,598 which had been incurred on construction of a road by the assessee. The ITO mentioned in his order that the road was 10 kms. long in the District of Kolapur, Maharashtra. This road connected the main road with the company''s mining area situated in a village

named ''Nagarsatavdi''. The ITO observed that there was no motorable road linking the main road with the mining area of the assessee-company and this road was constructed by the assessee-company for the first time by incurring a huge expenditure. According to the ITO, this was a benefit of enduring nature coming to the assessee and he, therefore, treated it as capital expenditure and did not allow the deduction.

Before the AAC, it was contended that the expenditure had been incurred for more efficient running of the business of the assessee. It was further stated that the land on which the road had been constructed did not belong to the assessee and it was further stated that earlier there was a katcha road which was much longer and that road was replaced by a shorter motorable road. The assessee relied on the decision of the Calcutta High Court in the case of COMMISSIONER OF Income Tax, WEST BENGAL Vs. HINDUSTHAN MOTORS LTD., . The AAC found that prior to the construction of this new road the company was carrying bauxite and stores of the company along the highway. He found that the distance was reduced by 6.35 kms. by the construction of this new road. The AAC was of the view that this was an absolutely new road and it was not a case of repairing/covering by metal of an already existing road.

Before the Tribunal it was contended that the land had been made available to the assessee by the Collector of Kolapur for the specific purpose of construction of a feeder road from the company''s mining area up to the main highway. It was also submitted that the land had been leased out for a period of 30 years and after the expiry of the lease the land was to be delivered to the Government. The road was to be maintained and repaired by the assessee. It was contended that though these facts were not stated before the lower authorities, the basic fact of road being constructed to shorten the distance and, thus, to remove a permanent inconvenience had been stated. The Tribunal considered the facts and held that the assessee constructed a new feeder road and this road was not merely improvement of an already existing road. The earlier road, according to the Tribunal, was discarded and in its place this new motorable road was constructed having a width of 80 ft. costing more than Rs. 20 lakhs. As an absolutely new road was constructed the Tribunal held that the expenditure was of capital nature.

2. The Division Bench considered the question which was raised as follows:

An expenditure of more than Rs. 20 lakhs was incurred for the purpose of constructing a new road. The road was 80 ft. in width and more than 10 miles in length. The road was built on a plot of leasehold land, acquired by the assessee for the purpose of constructing the said road. The assessee had to maintain this road. The lease was of 30 years duration and on expiry of that period the road had to be handed over to the Government. The road was built to reduce the distance from the main road to the mines owned by the assessee. The assessee''s case is that the expenditure incurred was for the purpose of its business and, therefore, must be

treated as revenue expenditure.

3. Several decisions of the Supreme Court were referred to the Division Bench including the decision of the Supreme Court in L.B. Sugar Factory and Oil Mills (P) Ltd., Pilibhit Vs. Commissioner of Income Tax , U.P., Lucknow, . The Division Bench considered this judgment in extenso and thereafter recorded as follows :

Therefore, the special features of the case which were emphasised by Bhagwati, J. were: (1) by spending the amount of Rs. 50,000, the assessee had not acquired any asset of an enduring nature. The road belonged to the Government of Uttar Pradesh and not the assessee; (2) the assessee paid only a small part of the cost of construction; (3) the construction of these roads facilitated the business operation of the assessee; and (4) it was not an advantage in the capital field because no tangible or intangible asset was acquired by the assessee nor was there any addition to or expansion of the profit-making apparatus to the assessee.

In the instant case, the assessee has acquired a leasehold property and has constructed a road on that property. The road belongs to the assessee. The assessee has acquired an asset of an enduring value. The asset is a tangible asset. The road is a new motorable road having width of 80 ft. The assessee spent Rs. 20,00,000 on construction of the road. The assessee was responsible for the maintenance of the road. In my judgment, such an expenditure has to be regarded as of capital nature.

I am unable to uphold the contention of Dr. Pal that in view of these three decisions of the Supreme Court, it can be said that the Supreme Court has departed from the well established principles for distinguishing a capital expenditure from revenue expenditure. On the contrary, in all the three judgments of the Supreme Court attempt has been made to extend the principles from the well-known cases and apply the principles in determining whether the expenditure should be capital expenditure or revenue expenditure.

4. In the judgment of the Supreme Court in the case of L.H. Sugar Factory & Oil Mills (P.) Ltd. (supra), Justice Bhagwati emphasised the fact that the road was not a new road. It was not an asset of the assessee. The assessee had not paid the total construction cost of the road but had made a small contribution towards it. The assessee had not acquired any asset tangible or otherwise. The profit-making apparatus of the company remains unchanged as a result of this expenditure. That is why the expenditure would be of revenue nature. Justice Bhagwati was not laying down new principles of law or departing from the well-known principles for distinguishing a revenue expenditure from a capital expenditure. Relying on these principles it was held that the expenditure in that case was to be treated as revenue expenditure.

5. It will be seen from the judgment of the Supreme Court in the case of Travancore-cochin Chemicals Ltd. Vs. Commissioner of Income Tax, Kerala, , that

Gupta, J. considered that the decision given in the case of Lakshmiji Sugar Mills Co. P. Ltd. Vs. Commissioner of Income Tax, New Delhi, must be confined to the peculiar facts of that case. Similarly, Bhagwati, J. in the case of L.H. Sugar Factory & Oil Mills (P.) Ltd. (supra) observed that the judgment delivered in the case of Travancore-Cochin Chemicals Ltd. (supra) must be confined to the peculiar facts of that case. In fact, when a question of capital or revenue expenditure arises, the question has to be decided by carefully considering every aspect of the case. It was observed by Hidayatullah, J. in the case of K.T.M.T.M. Abdul Kayoom and Another Vs. Commissioner of Income Tax, :

...Each case depends on its own facts, and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, its broad resemblance to another case is not at all decisive. What is decisive is the nature of the business, the nature of the expenditure, the nature of the right acquired, and their relation inter se, and this is only key to resolve the issue in the light of the general principles, which are followed in such cases. (p. 703)

In that case, the Supreme Court considered that yearly rent of Rs. 6,111 paid to the Government for three years'' lease of a specified area with liberty to fish for and take and carry away all chank shells was capital expenditure.

Lastly, one more point has to be noted. Dr. Pal has argued that the assessee could not be treated to be the owner of the road. On the facts of this case, I fail to see how the assessee can deny being the owner of the road. The assessee took the land on lease for construction of the road. The road was constructed by the assessee on that piece of land. The upkeep and maintenance of the road was the responsibility of the assessee. Some other persons occasionally may use the road; but that will not prevent the assessee from being the owner of the road.

The assessee has itself put the matter beyond doubt by claiming depreciation allowance on this road. This was negatived by the AAC but was allowed by the Tribunal. The claim for depreciation could be made by the assessee only on the basis that the road was owned by the assessee and was used for the purpose of its business.

6. Having regard to the principles laid down by the Supreme Court which have been duly considered by the Division Bench we do not think that it is a fit case for leave to appeal to the Supreme Court. The question whether an expenditure is capital or revenue has to be decided on the facts of the particular case and it has been decided in the light of the facts and circumstances of the case and in the light of the principles laid down in the several decisions of the Supreme Court recorded by the Division Bench in the aforesaid judgment.

7. We are, therefore, of the view that the question which is raised in this application is not required to be decided by the Supreme Court. Hence, we dismiss this application. There will be no order as to costs.

Sen, J.

I agree.