Commissioner of Income Tax Vs National Machinery Manufacturers Ltd.

Court: Bombay High Court

Date of Decision: March 8, 1991

Acts Referred: Income Tax Act, 1961 â€" Section 37

Citation: (1991) 97 CTR 186 : (1991) 191 ITR 483

Hon'ble Judges: T.D. Sugla, J; D.R. Dhanuka, J

Bench: Division Bench

Advocate: G.S. Jetley, for the Appellant; S.J. Mehta, for the Respondent

Judgement

D.K. Dhanuka, J.
The Income Tax Appellate Tribunal has referred the following two questions to this court u/s 256(1) of the Income Tax

Act, 1961 :

(1) Whether, on the facts and in the circumstances of the case, the premium of Rs. 4,50,000 paid by the assessee-company to the Maharashtra

Industrial Development Corporation under the agreement dated July 6 22, 1966, for temporary water supply connection was expenditure of a

revenue nature ?

(2) Whether, on the facts and in the circumstances of the case, the contribution of Rs. 1,56,800 paid by the assessee-company to the Maharashtra

Housing Board under the aforesaid scheme towards the building of houses for its employees was expenditure of a revenue nature ?

2. Relevant facts pertaining to question No. 1 are us under :

The assessment year is 1967-68. The assessee-company manufactured textile machinery, viz., ring frames, carding engines and looms. On July 22,

1966, an agreement was arrived at between the assessee-company and the Maharashtra Industrial Development Corporation (""M. I. D. C."", for

short) for temporary water supply connection from 24"" steel pipelines and 16"" prestressed concrete pipes laid on the Thane-Belapur Road. The

said agreement recited that the assessee-company had applied to M. I. D. C. for a temporary water supply connection, since the assessee-

company was in urgent need of water for their factory for industrial production and residential consumption in the factory estate. It appears from

the said agreement that M. I. D. C. had agreed to provide water supply connection to the assessee-company on a temporary basis till a final

agreement was entered into between the parties. Clause 16 of the said agreement provided that the said agreement shall remain in force for a

maximum period of not more than nine months and thereafter the parties shall enter into a final agreement which will be acceptable to both the

parties. The terms and conditions of the subsequent agreement were kept open for negotiation between the parties. Clause 16 of the agreement

does not provide for renewal of the agreement on the same terms. Under the said agreement, M. I. D. C. agreed to supply the booked demand of

1,00,000 gallons of water to the assessee-company per day. The assessee-company agreed to pay the estimated water charges from time to time

as may be demanded by M. I. D. C., i.e., at the rate of Rs. 2,75 per 1,000 gallons. Clause 1 of the said agreement reads as under :

(1) A temporary water supply connection will be given to NMM (i.e., the respondents-assessee herein) by MIDC for the present as the capital

contribution charges of Rs. 4.5 lakhs shall be paid by NMM.

3. Prior to the entering into said agreement, M. I. D. C. had already laid the pipeline and had incurred all the expenditure. The pipeline belonged to

M. I. D. C. at all times. The pipeline continued to belong to M. I. D. C. It was the case of the assessee-company before the assessing authorities

that the assessee had incurred the said expenditure during the course of running its business and not to acquire any capital asset or any advantage

of enduring nature. The assessee claimed deduction of the said amount as a revenue expenditure. The assessee contended that the assessee had to

incur the said expenditure in the course of its business and from the point of view of commercial expediency. It was the contention of the Revenue

at all times that the assessee had acquired an enduring advantage under the said agreement, as the said agreement was bound to be renewed on the

expiry of nine months and the said sum of Rs. 4,50,000 was to be treated as a capital contribution of the assessee-company towards acquisition of

a capital asset.

4. The Income Tax Officer took the view that the said amount of Rs. 4,50,000 was liable to be treated as capital expenditure. The Appellate

Assistant Commissioner agreed with the said view of the Income Tax Officer. The Income Tax Appellate Tribunal in appeal came to the

conclusion that the said expenditure was liable to be viewed as a premium for obtaining the water supply and not as contribution to the cost of

laying the pipeline. The Tribunal also came to the conclusion that the assessee-company had not acquired any benefit of enduring nature under the

said agreement as the said agreement was merely a temporary agreement. The Tribunal came to the conclusion that the assessee-company had

merely paid the said sum of Rs. 4,50,000 as a contractual consideration for obtaining water supply for its business in addition to its obligation to

pay the water charges at a particular rate. It was also emphasised by the Tribunal that the pipeline belonged to M. I. D. C. and continued to so

belong. Applying the relevant tests as laid down in Gotan Lime Syndicate Vs. Commissioner of Income Tax, Rajasthan and Delhi, , the Tribunal

came to the conclusion that the said expenditure was liable to be considered as of a revenue nature and was thus liable to be allowed as a revenue

deduction.

5. Shri Jetley, learned counsel for the applicant-Revenue, has submitted that the assessee had obtained an enduring advantage under the said

agreement dated July 22, 1966, and that it will not be correct to state that the said agreement was for a period of nine months only inasmuch as the

said agreement contemplated the entering into of a further agreement also. Shri Jetley submitted that the assessee had made a capital contribution

of Rs. 4,50,000 not for the purpose of availing of the facility of water supply for a period of in e months only. In our judgment, the Tribunal is right

in the view which it took. The said agreement on its plain interpretation, in the light of the recitals preceding the operative part thereof, clearly states

that the said agreement shall remain in force for a maximum period of not more than nine months. Merely because the parties may or may not

arrive at a subsequent agreement in the future, it does not follow that the arrangement evidence by the said agreement dated July 22, 1966, was

not a temporary arrangement.

6. Shri Jetley, learned counsel for the applicant-Revenue, relied upon clause 1 of the said agreement dated July 22, 1966, in which the said amount

of Rs. 4,50,000 has been described as ""the capital contribution charges"" paid by the assessee to M. I. D. C. Learned counsel for the Revenue also

emphasised the note marked ""J"" forming part of the accounts of the assessee for the year ended December 31, 1966, relevant to the assessment

year 1967-68, to the following effect :

J. Miscellaneous expenses include an amount of Rs. 4.50 lakhs paid to the M. I. D. C. as the company''s (i.e., the assessee''s) share of the capital

cost of its water pipeline from Thane to Belapur.

7. Merely because the said amount is so described in the accounts of the assessee-company, it does not follow that the said expenditure is not a

revenue expenditure. The Income Tax Officer, in his order, has clearly stated that the said amount of Rs. 4,50,000 was debited by the assessee to

the works expenses account. Therefore, the above referred description of the said amount in the account of the assessee-company cannot be

conclusive for the purpose of deciding the question under consideration and the agreement is liable to be interpreted having regard to its recitals

and operative clauses.

8. Shri Jetley, learned counsel for the applicant-Revenue, relied upon the judgment of the Hon''ble Supreme Court in Travancore-cochin

Chemicals Ltd. Vs. Commissioner of Income Tax, Kerala, . In this case, it was held by the Hon''ble Supreme Court that the assessee had obtained

an enduring advantage by construction of a new road in the area of the factory. Having regard to the totality of the facts and circumstances of that

case, the Hon''ble Supreme Court held in that case that the contribution made by the assessee to the Government towards construction of a new

road in the area of the factory was liable to be treated as a capital expenditure. It shall be convenient to refer at this stage to the judgment of the

Hon''ble Supreme Court in Lakshmiji Sugar Mills Co. P. Ltd. Vs. Commissioner of Income Tax, New Delhi, . In this case, it was held by the court

that the contribution made by the assessee towards the construction and development of roads between the various sugarcane producing centres

and the sugar factories was liable to be considered as a revenue expenditure, as the said expenditure was incurred by the assessee for the purpose

of facilitating the running of its motor vehicles and was, therefore, incurred for running the business or working it with a view to producing profits

without the assessee gaining any advantage of an enduring benefit to itself. The criterion to be applied is to see whether the assessee has obtained

any advantage of an enduring benefit under the said agreement dated July 22, 1966.

9. Shri Jetley, learned counsel for the applicant-Revenue, also relied on the judgment of the Hon''ble Supreme Court in L.B. Sugar Factory and Oil

Mills (P) Ltd., Pilibhit Vs. Commissioner of Income Tax , U.P., Lucknow, . It was held by the Hon''ble Supreme Court in this case that the

contribution made by the assessee had nothing whatsoever to do with the business of the assessee. It was, therefore, held that the expenditure in

question was not a revenue expenditure. The question to be asked is whether the expenditure was incurred in the ordinary course of business or

commercial expediency or was the expenditure incurred to acquire a capital asset or to acquire an enduring benefit. This case is clearly

distinguishable and is of no assistance to the Revenue.

10. Shri Jetley learned counsel for the applicant-Revenue, relied upon the judgment of our High Court in Fancy Corporation Ltd. Vs.

Commissioner of Income Tax, . In this case, the assessee-company attempted to install a borewell at its new factory site. The attempt failed. The

question before the court was whether in expenditure incurred by the assessee was a revenue expenditure or a capital expenditure or a capital

expenditure. It was held by the court that the expenditure incurred would have been a capital expenditure had the well been successfully bored, as

it would have added to the fixed capital of the assessee and would have become a part of its capital assets. It was held by our High Court in this

case that, as the expenditure was incurred in attempting to obtain a capital asset by boring a well, there would be no doubt that the expenditure

was in the nature of a capital expenditure. This case has no relevance at all in the consideration of the first question arising in this reference. In the

instant case, there is no question of the assessee trying to acquire a capital asset, as the asset in question always belonged to Maharashtra Industrial

Development Corporation and continued to so belong. This case, therefore, has no bearing on the subject.

11. Shri Mehta, learned counsel for the respondents-assessee, relied upon the judgment or our High Court in Commissioner of Income Tax,

Bombay City-iv Vs. Excel Industries Ltd., . In this case, the assessee had made payment for overhead service line which was to remain the

property of the Gujarat Electricity Board and the question before our High Court was whether the payment made, was allowable as revenue

expenditure. It was held by our High Court that since the service line remanded the property of the electricity board, the assessee had not acquired

any capital asset or an enduring benefit or advantage and the object of making the payment was purely one of commercial expediency. It was held

by the court that the payment made by the assessee to the electricity board towards the cost of laying the overhead service line constituted revenue

expenditure and was an allowable education. It appears to us that this case is on all fours and the facts of the case under consideration are almost

identical with the facts of this case. We are in complete agreement with the ratio of the judgment in Commissioner of Income Tax, Bombay City-iv

Vs. Excel Industries Ltd., as well as the finding to fact recorded by the Tribunal. We do not consider it necessary to refer to other authorities cited

by counsel on either side on this question.

12. We, accordingly, answer question No. 1 in the affirmative and in favour of the assessee.

13. We shall now proceed to deal with the second question under consideration. The relevant facts for consideration of the second question are as

under :

During the year ended December 31, 1966, the assessee paid a sum of Rs. 1,56,800 to the Maharashtra Housing Board as contribution towards

the cost of certain tenements in lieu of the right conferred on the assessee to allot the tenements for the use of its workmen. Our attention has been

invited by learned counsel on both sided to the copy of the scheme framed by the Maharashtra Housing Board to assist the employers in solving

the problem of providing houses to their workmen. Under the said scheme, the State Government or its approved agencies like the Maharashtra

Housing Board and the Vidarbha Housing Board have undertaken to construct houses for the industrial employers so as to solve the problem of

housing their workmen. The said Scheme provides that the ownership of houses will vest in the State Government or the Housing Boards, as the

case may be. Clause 2 of the said Scheme is directly relevant. The said clause reads as under :

2. The allotment of houses will be entrusted to a managing committee consisting of an equal number of representatives of the employer and of his

workers with a chairman nominated by the Government. The employer may, however, at his discretion allot up to 15% of the houses, out of turn,

to workers who are eligible workers in accordance with the standard allotment rules prescribed in Appendix "P" to the S. I. H. Scheme.

14. Thus, for all times to come, the employer is empowered to allot 15% of the tenements out of turn to the workers who are eligible workers in

accordance with the standard allotment rules. Even in respect of the rest of the tenements, the allotment is to be made by a managing committee

consisting of an equal number of representatives of the employer and of his workers with a chairman nominated by the Government. Thus, in sub-

stance, a right of an enduring nature has been conferred under the scheme on the assessee to allot the tenements constructed to their workmen.

Merely because the title to the said tenements vests in the State Government or the Housing Boards, it does not follow that the assessee has not

acquired any advantage of an enduring nature. On this aspect, it shall be convenient first to refer to the judgment of our High Court in Cooper

Engineering Ltd. Vs. Commissioner of Income Tax, Bombay City-I, Bombay, . In the case of Cooper Engineering Ltd., the material facts were as

under :

The Maharashtra Housing Board had built tenements under a similar subsidised industrial housing scheme for housing industrial workers of the

assessee in accordance with the scheme sanctioned by the Government. The tenements belonged to the State Government. It the occupant of a

tenement ceased to be an employee of the assessee, he was required to vacate the tenement and the responsibility of evicting the employee was

that of the State Government. It was held by our court that though the building in which the tenements were situate and the land upon which the

buildings stood were not owned by the assessee, the assessee had obtained an advantage of enduring nature by incurring the expenditure in

question inasmuch as the assessee had secured the advantage of housing its employees for a long period. It was observed by our court that the

buildings would stand for a considerable period. It was, therefore, held that the assessee by making a contribution to the State Housing Board had

derived advantage of an enduring nature and, therefore, the expenditure incurred therefore was of a capital nature and was not deductible. We are

in complete agreement with the view taken in the above case and we see on material difference between the facts of the case before the High

Court in Cooper Engineering Ltd. Vs. Commissioner of Income Tax, Bombay City-I, Bombay, and the facts of this case.

15. Shri Mehta, learned counsel for the respondent-assessee, has however, invited our attention to another judgment of our High Court in

Commissioner of Income Tax, Bombay City-I Vs. Hingir Rampur Coal Co. Ltd., . In that case, the agreement between the assessee and the Coal

Mines Labour Housing Board was to remain in force for a period of 15 years only. Having regard to the facts of that case, the High Court came to

the conclusion that the assessee in that case could not be said to have acquired an enduring advantage. Having regard to the said finding it was held

that the expenditure incurred by the assessee was allowable as revenue expenditure. In our case, the scheme does not confer the right on the

assessee to allot tenements to its employee only for a limited period. The assessee shall continue to have the right to make the allotment of the

tenements to its workmen to the extent provided in clause 2 of the scheme for all times to come. This case is clearly distinguishable.

16. It is, however, necessary to refer to one more case before we conclude the discussion on the point. In Commissioner of Income Tax Vs. T.V.

Sundaram Iyengar and Sons (P.) Ltd., , the High Court of Madras had held on the facts of that case that the expenditure incurred was a

permissible deduction as revenue expenditure incurred wholly and exclusively for the purpose of the assessee''s business. If one closely analyses

the facts of that case, it will be clearly found that a finding was recorded in that case that the assessee had incurred the expenditure in that case

more as a matter of commercial expediency than anything else. This case was, therefore, rightly distinguished by our High Court in Cooper

Engineering Ltd. Vs. Commissioner of Income Tax, Bombay City-I, Bombay, , by making the following observations (p. 70) :

The emphasis in the Madras judgment is upon the commercial expediency which made the assessee contribute towards the housing scheme. Such

commercial expediency resulted in the finding that the expenditure was incurred for the purposes of the assessee''s business and was, accordingly,

deductible. No question of commercial expediency arises in the matter before us.

17. We agree with the above point of view.

18. Shri Mehta, learned counsel for the respondent-assessee, has invited our attention to the judgment of the Hon''ble Supreme Court in

Commissioner of Income Tax Vs. T.V. Sundaram Iyengar and Sons P. Ltd., . The appeal of the Revenue against the above-referred judgment of

the High Court of Madras in the very same case, viz., Commissioner of Income Tax Vs. T.V. Sundaram Iyengar and Sons (P.) Ltd., , was

dismissed by the apex court.

19. In our case also, there is no finding of fact that the assessee made the contribution for providing tenements to its workmen to the Maharashtra

Housing Board as a matter fort commercial expediency. The facts of this case bear close analogy with the facts of the case in Cooper Engineering

Ltd. Vs. Commissioner of Income Tax, Bombay City-I, Bombay, . We are of the view that the above-referred judgment of the High Court of

Madras was rightly distinguished in the above-referred Bombay judgment. Accordingly, it makes no difference to the result of this case that the

appeal against the above-referred judgment of the High Court of Madras was dismissed by the Hon''ble. Supreme Court. Since the Madras case

bears no analogy to the facts of our case, we need not follow the same. With respect, we have come to the conclusion that the judgment of our

High Court in Cooper Engineering Ltd. Vs. Commissioner of Income Tax, Bombay City-I, Bombay, continues to hold the field.

20. In view of the above discussion, we answer the second question in the negative and in favour of the Revenue.

21. There shall be no order as to the costs of the reference.