

**(1988) 12 BOM CK 0068**

**Bombay High Court**

**Case No:** Income-tax Reference No. 144 of 1976

Commissioner of Income Tax

APPELLANT

Vs

Vulcan Laval Ltd.

RESPONDENT

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**Date of Decision:** Dec. 1, 1988

**Acts Referred:**

- Income Tax Act, 1961 - Section 37, 40

**Citation:** (1991) 188 ITR 453

**Hon'ble Judges:** T.D. Sugla, J; S.P. Bharucha, J

**Bench:** Division Bench

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### **Judgement**

S.P. Bharucha, J.

The reference raises four questions at the instance of the Revenue and two question at the instance of the assessee. The questions read thus :

"(1) Whether, on the facts and in the circumstances of the case, cash allowance paid to the employees could be considered as outside the purview of section 40(c)(iii) of the Income Tax Act, 1961, for the assessment years 1967-68 and 1968-69?

(2) Whether, on the facts and in the circumstances of the case, cash allowances paid to the employees could be considered as outside the purview of section 40(a)(v) of the Income Tax Act, 1961, for the assessment years 1969-70 and 1970-71?

(3) Whether, for the assessment years 1968-69 to 1970-71, on the facts and in the circumstances of the case, the assessee was entitled to building on the cost of roads either as part of factory buildings or building by themselves at 2 1/2%?

(4) Whether, for the assessment years 1967-68 to 1970-71, on the facts and in the circumstances of the case, the assessee was entitled to development rebate in respect of durable machine tools on the footing that they constituted "machinery and part plant" provided the necessary reserve and been created according to law ?

## 2. Assessee's questions :

(1) Whether, for the assessment years from 1967-68 to 1970-71, on the facts and in the circumstances of the case, the assessee entitled to the allowance as business expenditure of the amounts spent for lunches and dinners given to its clients and other persons connected with business ?

(2) Whether the assessee is entitled to deduct as revenue expenditure Rs. 2,03,945 being public issue expenses ?"

3. It is common ground that the 1st and 2nd questions raised by the Revenue must be answered in the affirmative and in favour of the assessee, having regard to this court's judgment in [Commissioner of Income Tax, Bombay City-II Vs. Indokem Private Ltd.,](#) . These questions are answered accordingly.

4. It is also common ground that the 3rd question raised by the Revenue must be answered in favour of the assessee, having regard to this court's judgment in [Commissioner of Income Tax, Bombay City-I Vs. Colour-chem Ltd.,](#) . This question is answered thus. The assessee was entitled to depreciation on the cost of roads as "building".

5. The fourth question raised by the Revenue is contested. The assessee is a limited company and manufactures dairy machinery. It uses durable tools every year in the nature of measuring instruments, standard clamping equipment, cutting tools, jigs and fixtures, individually or in conjunction with other machinery. IT was not disputed before the Tribunal that these durable tools had an average life not exceeding 3 years. The assessee claimed development rebate upon these durable tools on the footing that they constituted "plant and machinery". The Income Tax Officer rejected the claim. The Appellate Assistant Commissioner accepted it only in regard to one of the four years involved and the Tribunal accepted it in to to.

6. It was contended that these durable tools cannot be considered to be plant and machinery. As the Tribunal very rightly pointed out, that since the Income Tax Rules, as amended, themselves considered such tools to be plant and machinery, we see no reason to interfere with the Tribunal's conclusion in this regard. It was contended before us, as it had been contended before the Tribunal, that such durable tools were not installed. The word "installed" does not necessarily mean embedded in the earth or the like. A machinery or a tools can be said to have been installed if it has been put into a position in which it can be used. It was contended also that 1/3rd of the expenditure incurred in regard to the durable tools having been debited in the profit and loss account, development rebate could not be allowed. We do not see any substance in this contention. If the durable tools are otherwise entitled to development rebate, as we have held, it does not make a difference that the assessee has made a particular entry in regard to the expenses incurred thereon. The Tribunal was, in the circumstances, justified in directing the Income Tax Officer to see whether the reserve in this behalf, as required by the

statute, had been created and if he found that, it had to allow the development rebate on the durable tools. The fourth question raised by the Revenue is, accordingly, answered in the affirmative and in favour of the assessee.

7. The first question raised by the assessee relates to the disallowance of certain sums of money as being entertainment expenses. The Tribunal considered the lists detailing these expenses and found that many of the items were for the lunches and dinners for clients and other persons connected with the assessee's business. The Tribunal took the view that these lunches and dinners constituted entertainment. This is basically a question of fact with which we may not interfere. Mr. Munim submitted that to be entertainment, the lunches and dinners would have to be lavish. But whether or not the lunches and dinners were lavish is a question of fact which is a matter for the Tribunal to consider. Accordingly, the first question raised by the assessee is answered in the negative and in favour of the Revenue.

8. The second question raised by the assessee is in regard to the expenditure upon a public issue and Mr. Munim, learned for the assessee, fairly conceded that the question must be answered in the negative and in favour of the Revenue, having regards to this court's decision in *Bombay Burmah Trading Corporation Ltd. v. CIT* [1984] 145 ITR 973. The question is so answered.

9. There shall be no order as to costs.