

(1994) 12 BOM CK 0072**Bombay High Court****Case No:** Income-tax Reference No. 10 of 1985

Commissioner of Income Tax

APPELLANT

Vs

Chowgule Chemicals Pvt. Ltd.

RESPONDENT

Date of Decision: Dec. 20, 1994**Acts Referred:**

- Income Tax Act, 1961 - Section 37(1)

Citation: (1995) 216 ITR 234**Hon'ble Judges:** S.M. Jhunjhunwala, J; B.P. Saraf, J**Bench:** Division Bench**Advocate:** G.S. Jetley and P.S. Jetley, instructed by Smt. S. Bhattacharya, for the Appellant;
K.B. Bhujli and S.P. Vijaykar, instructed by S.N. Inamdar, for the Respondent

Judgement

Dr. B.P. Saraf, J.

By this reference made u/s 256(1) of the Income Tax Act, 1961, the Income Tax Appellate Tribunal has referred the following question to this court for opinion, at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in allowing the claim of the assessee for deduction of a sum of Rs. 27,940 being the expenditure incurred for laying a new pipeline for supply of water to the factory premises of the assessee, as a revenue expenditure ?"

2. This reference pertains to the assessment year 1978-79. During the previous year relevant to the above assessment year, the assessee-company had taken a new connection for the supply of water to the factory premises and incurred an expenditure of Rs. 27,940 for the said purpose. The assessee claimed it to be a business expenditure and, hence, an allowable deduction in the computation of its income. This claim of the assessee was negated by the Income Tax Officer who held that the expenditure was of a capital nature. On appeal by the assessee, the Commissioner of Income Tax (Appeals), however, allowed the expenditure as a

business expenditure. The Revenue appealed to the Income Tax Appellate Tribunal ("the Tribunal"). The Tribunal upheld the order of the Commissioner of Income Tax (Appeals) and dismissed the appeal of the Revenue. The Tribunal held that as the premises did not belong to the assessee, the assessee did not obtain any enduring advantage by taking the new connection. The Tribunal also held that there was already a water supply line in existence and by taking a new line, the existing water supply was merely augmented. The Tribunal, therefore, held that the expenditure in question was a revenue expenditure.

3. Mr. Jetley, learned counsel for the Revenue, submits that in the instant case, the assessee obtained an advantage of enduring nature and as such the expenditure should be held to be an expenditure of capital nature.

4. On a careful consideration of the facts of the present case, we find it difficult to accept the above contention. The various tests evolved from time to time by courts to determine whether an expenditure is a revenue expenditure or capital expenditure are too well-known to need reiteration. Equally well-known is the legal position that no test can be laid down for the purpose of universal application. The Supreme Court has also given a note of caution against indiscriminate application of the oft repeated tests like "once for all payments" and "enduring benefit test", and made it clear that these tests are not to be treated as something akin to statutory conditions. Whether an expenditure is revenue or capital will depend on the facts and circumstances of each case and on the application of the proper principles of law. As observed by this court in [Commissioner of Income Tax Vs. Tata Engineering and Locomotive Co. Ltd.](#), :

".... One of the guiding factors should be the aim and object of the expenditure. The question, however, will have to be decided by looking at the overall facts and circumstances of the case from the point of view of a practical and prudent businessman rather than from the angle of a tax gatherer upon strict juristic classification of the legal rights, if any, secured in the process. In other words, in order to arrive at a just and proper conclusion, one must look at the type, nature and character of the advantage in a commercial sense (without giving undue emphasis to the form thereof or the terminology used) in the light of the surrounding circumstances and in the larger context of necessity and expediency. If the expenditure is so related to the carrying on or conduct of the business that it may be regarded as an integral part of the profit-making process and not for acquisition of an asset or a right of permanent character, the expenditure may be regarded as revenue expenditure even though the advantage may endure for some indefinite future. What is relevant is the purpose of the outlay and its intended object and effect, considered in a commonsense way, having regard to the business realities. In a given case, the test of "enduring benefit" might break down"

5. It was held in the above case (at page 1043) :

"The "purpose of the outlay", "its intended object and effect", considered in a commonsense way, having regard to the business realities, are more relevant factors for determining whether a particular outlay is capital or revenue. In a given case, if the situation so requires, the test of "enduring benefit" might even break down under the weight of these considerations."

6. Applying the above principles to the facts of the present case, we are of the clear opinion that the expenditure incurred by the assessee was a revenue expenditure and not an expenditure of capital nature and the Tribunal was justified in holding so and allowing the deduction to the assessee in the computation of its income on account thereof.

7. In view of the above, the question referred to us is answered in the affirmative and in favour of the assessee.

8. No order as to costs.