Commissioner of Income-tax Vs. T.V. Sundaram Iyengar and Sons (P.) Ltd.

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Court : Chennai

Decided On : Oct-26-1973

Reported in : [1974]95ITR428(Mad)

Judge : G. Ramanujam and ;V. Ramaswami, JJ.

Acts : Indian Income Tax Act, 1922 - Sections 10(2)

Appeal No. : Tax Case No. 94 of 1968 (Reference No. 25 of 1968)

Appellant : Commissioner of Income-tax

Respondent : T.V. Sundaram Iyengar and Sons (P.) Ltd.

Advocate for Def. : S. Swaminathan and ;K. Ramgopal, Advs.

Advocate for Pet/Ap. : V. Balasubrahmanyan and ;J. Jayaraman, Advs.

Judgement :

Ramaswami, J.

1. The assessee is a private limited company carrying on business in the purchase and sale of motor vehicles, spare part, and accessories and agricultural implements besides having a number of workshops where servicing and repairs to vehicles as well as body building is done. The company has its head office at Madurai with a number of branches in various places. For the assessment year 1958-59, corresponding to the year ending December 31, 1957, the assessee returned a total income of Rs. 43,40,870. In arriving at this income the assessee claimed a deduction of a sum of Rs. 39,696 under ' welfare expenses '. This represented the amount spent in purchasing 6 acres 991/2 cents of land in Madurai in the name of the District Collector, Madurai, for the purpose of constructing houses for the company's workers by the Government under the subsidised industrial housing scheme sponsored by the State Government. The assessee claimed that this amount was an allowable deduction as a revenue expenditure under Section 10(2)(xv) of the Indian Income-tax Act, 1922.

2. Before the Income-tax Officer the assessee claimed that there was no acquisition of any capital asset on the ground that though the company paid the amount to the owners of the land, the conveyance was executed in the name of the District Collector, Madurai. It was also contended that the amount was spent to provide quarters for the company's workers in order to get their maximum service to improve the company's business and that, therefore, it is an allowable deduction under Section 10(2)(xv). TheIncome-tax Officer disallowed the claim in the view that the

expenses incurred towards providing quarters to the assessed employees surely gives the company a perennial advantage and the fact that the land was purchased in the name of the District Collector will not change the capital nature of the transaction. The Appellate Assistant Commissioner was also of the' view that the advantage derived by incurring this expenditure is clearly of a permanent nature as it would result in providing accommodation for workers and keep them contented over a long period in the future, that it was incurred once and for all and as such the expenditure is of a capital nature. The fact that the land was purchased in the name of the District Collector instead of in the company's name did not matter as the benefit derived would be precisely what the company would have derived if it had itself constructed the quarters for its workers. The Appellate Assistant Commissioner also rejected the argument of the assessee that the amount should be considered as an accumulated revenue expenditure made in advance.

3. The Tribunal held that the expenditure was incurred by the assessee-company under the subsidised industrial housing scheme of the Government and that therefore it is an expenditure incurred wholly and exclusively for the purpose of the assessee's business. It further held that since the sale deed is in favour of the District Collector the title is vested in the Government and the assessee has not acquired for itself any capital asset and, therefore, this is not a case of an acquisition of a capital asset of an enduring nature. On the question of the nature of the benefit which the assessee can be said to have derived from the purchase of this land in the name of the Government, the Tribunal was of the view that no enduring benefit had accrued to the assessee by incurring this expenditure. Under the scheme the assessee had to incur similar, expenditure every year and that, therefore, it cannot be said that the expenditure incurred by the assessee had been incurred once and for all. The Tribunal also referred to the fact that the expenditure works out to only about one per cent. of the total income of the assessee for the assessment year in question. In that view, the Tribunal held that the expenditure was wholly and exclusively incurred for the purpose of the business, that it is revenue expenditure and that it is a permissible deduction under Section 10(2)(xv) of the Indian Income-tax Act, 1922. At the instance of the Commissioner of Income-tax, the following question of law has been referred :

' Whether, on the facts and in the circumstances of the case, the sum of Rs. 39,696 was a permissible deduction as a revenue expenditure incurred wholly and exclusively for the purposes of the assessee's business ?'

It may be noted that the revenue also requested the Tribunal to refer the following two questions:

' 1. Whether the Tribunal's conclusion that the expenditure was incurred wholly and exclusively for the purposes of the business is based on a reasonable view of the facts of the case and

2. Whether the conclusion of the Tribunal that the expenditure neither resulted in acquisition of a capital asset nor in bringing in any benefit or any enduring benefit to the assessee is based on a reasonable view of the facts and circumstances of the case ?'

But the Tribunal considered that the question referred would cover the point in issue. Thereafter, revenue filed T.C.P. No. 5/69 under Section 66(2). This court by an order

dated February 14, 1969, dismissed that petition holding that the question already referred to this court in T.C. No. 94/68 covers the other two questions as well and which are only aspects of the question that has been referred.

4. Under Section 10(2)(xv) of the Indian Income-tax Act, 1922, any expenditure not being in the nature of a capital expenditure laid out or expended wholly and exclusively for the purpose of the business, shall be deducted in computing the profits and gains of the business. There could be no dispute that the amount in question was laid out or expended wholly and exclusively for the purpose of the business of the assessee. In fact, the Income-tax Officer and the Appellate Assistant Commissioner proceeded to consider whether it is an allowable deduction on the basis that the amount was wholly and exclusively spent for the purpose of the business. The Tribunal gave a finding that it is an expenditure incurred wholly and exclusively for the purpose of the assessee's business. It is not disputed that the expenditure was in fact incurred by the assessee under the subsidised industrial housing scheme of the Government. The land was purchased for the purpose of providing tenements to ' the workers employed by the assessee. It must, therefore, be regarded as ah expenditure incurred wholly and exclusively for the purpose of the business.

5. The vexed question is whether the expenditure though incurred wholly and exclusively for the purpose of the assessee's business is of the nature of a capital expenditure or an allowable business expenditure. Various tests have been suggested in a number of decided cases for the determination of this question. Though these tests laid down therein are clear and understandable the difficulty arises in applying them to individual cases, for even the slightest difference in facts might change the entire character of the expenditure. The oft-quoted leading test was the one propounded by Viscount Cave L.C. in Atherton v. British Insulated & Helsby Cables Ltd., [1925] 10 T.C. 155 . In that case the assessee-company claimed as a deduction in computing its profits for income-tax purposes a lump sum of 31,784 which it had contributed irrevocably as the nucleus of a pension fund established by trust deed for the benefit of its clerical and technical salaried staff. The amount was actually ascertained to be necessary to enable past years of service of the then existing staff to rank for pension. While holding that the sum was not an admissible deduction in arriving at the company's profits for income-tax purposes, Viscount Cave L.C. observed:

' But when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset, or an advantage for the enduring benefit of a trade, I think that there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital.'

The Supreme Court considered this question in detail in Assam Bengal Cement Co. Ltd. v. Commissioner of Income-tax, : [1955]27ITR34(SC) , and the following passage in that judgment may be usefully quoted :

' If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly attributable to capital and is of the nature of capital expenditure. If on the other hand it is made not for the purpose of bringing into existence any such asset or advantage but for running the business or working it with a view to produce the profits it is a revenue expenditure. If any such asset or advantage for the enduring benefit of the business is

thus acquired or brought into existence it would be immaterial whether the source of the payment was the capital or the income of the concern or whether the payment was made once and for all or was made periodically. The aim and object of the expenditure would determine the character of the expenditure whether it is a capital expenditure or a revenue expenditure. The source or the manner of the payment would then be of no consequence. It is only in those cases where this test is of no avail that one may go to the test of fixed or circulating capital and consider whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital. If it was part of the fixed capital of the business it would be of the nature of capital expenditure and if it was part of its circulating capital it would be of the nature of revenue expenditure. These tests are thus mutually exclusive and have to be applied to the facts of each particular case in the manner above indicated. It has been rightly observed that in the great diversity of human affairs and the complicated nature of business operations it is difficult to lay down a test which would apply to all situations. One has therefore got to apply these criteria one after the other from the business point of view and come to the conclusion whether on a fair appreciation of the whole situation the expenditure incurred in aparticular case is of the nature of capital expenditure or revenue expenditure in which latter event only it would be a deductible allowance under Section 10(2)(xv) of the Income-tax Act. '

Although the amount was contributed by the assessee for the purchase of the land, the sale deed was executed in favour of the District Collector vesting the title with the Government. It is true that the land was intended for the purpose of construction of tenements for the workers of the assessee-company and it does not appear that the Government could utilise the land for any other purpose or for construction of tenements for workers other than the workers of the assessee-company. ' But that will not, in our opinion, make any difference on the question whether the company has acquired the asset of an enduring nature. The assessee-company has thus not acquired for itself any capital asset. That leads us to a consideration as to whether the expenditure was made for acquiring or bringing into existence an advantage for the enduring benefit of the business.

6. The Income-tax Officer and the Appellate Assistant Commissioner considered that the advantage derived by the assessee by such an expenditure was that it would result in providing accommodation for workers and keep them contented for a long period in the future. The Tribunal considered that it would be very problematic whether by merely providing accommodation for the workers the assessee will be able to keep them contented over any length of period and that in any case it would depend upon the part played by the assessee in providing accommodation for the workers. The Tribunal also pointed out that under the scheme of the Government, as seen in the press note No. 1 dated August 22, 1958, an agreement was reached between the representatives of the employers and the employees and the Government that each employer in this State employing one thousand or more workers will as a minimum programme provide houses for four per cent. of his employees excluding those already housed by the employer and proceed at the same rate every year thereafter. The provision of housing for 50 per cent. of the employees should be the maximum expected of any employer. The Tribunal considered that this creates an obligation on the assessee to incur similar expenditure every year and, therefore, it could not be stated that the expenditure incurred by the assessee in this case had been incurred once and for all the time. The Tribunal also relied on the fact that the expenditure in question works out only to about one per cent. of the total income of the assessee-company for the assessment year in question.

7. It is seen from the scheme as shown in the press note that there is an element of compulsion in the matter of provision of houses to the workers. There is no evidence that the entire cost of the scheme had to be met by the assessee-company. The scheme is designated as subsidised industrial housing scheme of the Government. It would appear, therefore, that a portion at least of the expenditure would be met by the Government. The scheme was formulated by the Government as part of their welfare measure of providing houses for the workers. The preamble of the press notification actually reads as follows:

' The Government have given their anxious consideration to the question of housing industrial workers in the State. Though successive labour conferences had recommended that employers should provide a reasonable number of houses for their workers, and the Government of India have offered financial assistance in the shape of loans and subsidies for the purpose, the progress made by employers in the provision of houses for their workers in this State has not been rapid when compared to other States. It was also suggested that the Government should bring in legislation on the Mysore model requiring employers to contribute a percentage of their wage bill towards the construction of houses for the workers. '

8. The Government actually was proposing to bring in legislation to make the employers contribute a percentage of their wage bill towards construction of houses for the workers as seen from the press note. In view of the voluntary agreement of the employers to contribute towards such a measure, it was stated in the notification that the Government had decided to defer the question of bringing in legislation. It does not appear that the company would have any interest in the buildings to be built on the land either. Their obligation would be over by contributing their share towards the scheme. We, therefore, doubt very much whether the assessee in spending the money expected to acquire or bring into existence any advantage for the enduring benefit of his business. Further, in the assessment year in question only the land has been purchased and actually no buildings have been put up in that year. We have to keep in mind that we must consider the question of allowability of the deduction on the facts as existing in the assessment year. The expenditure was incurred more as a matter of commercial expediency in pursuance of the tripartite agreement above referred to. We are, therefore, of the view that the amount in question was a permissible deduction as a revenue expenditure incurred wholly and exclusively for the purpose of the assessee's business and accordingly we answer the reference in the affirmative and against the revenue, without costs.