

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.4 OF 2018

The Commissioner of Income Tax,
having office at Aayakar Bhavan,
Patto-Plaza, Panaji - Panaji.

.... Appellant.

Versus

Salgaocar Mining Industries Pvt. Ltd.
Salgaocar Bhavan,
Next to Doordarshan Kendra,
Altinho, Panaji, Goa 403 001.

.... Respondent.

Ms. Susan Linhares, Standing Counsel for the Appellant.

Mr. P. Pardiwala, Senior Advocate with Mr. A. D. Bhobe, Ms. C. Mashelkar and Ms. K. Govekar, Advocates for the Respondent.

***Coram : S.C. Gupte &
Nutan D. Sardesai, JJ.***

Date : 9th July, 2019.

ORAL JUDGMENT : (Per S.C. Gupte, J.)

Heard learned Counsel for the Appellant-Revenue and the Respondent-Assessee.

2. This Tax Appeal challenges an order passed by the Income Tax Appellate Tribunal, Panaji Bench, Panaji ('ITAT'). The controversy in the appeal concerns treatment of the contribution of ₹ 1,38,54,167-00 made by the Respondent-Assessee to Goa Infrastructure Development Co. Ltd., a Government Undertaking,

during the assessment year 2008-09 for construction of Usgao bridge, which was said to be essential for smooth and efficient running of the business of the Assessee. The question was, whether this expenditure should be treated as 'capital expenditure' or 'revenue expenditure'. The ITAT, in its impugned order, held the expenditure to be entirely a revenue expenditure. That is challenged in this appeal by the Revenue.

3. The basis of the Revenue's challenge is that the concerned expenditure has secured a benefit to the Assessee which is not of a transitory nature, but of an enduring nature and the expenditure must accordingly be treated as 'capital expenditure'. It is submitted that the advantage of enduring nature brings the case within the principles laid down in *British Insulated and Helsby Cables Ltd. vs. Atherton*, 10 TC 155 (HL), which are considered by the Supreme Court in *Empire Jute Co. Ltd. vs. Commissioner of Income-tax*, reported in [1980] 3 Taxman 69 (SC).

4. In the relevant assessment year (i.e. 2008-09), the Assessee contributed ₹ 1,38,54,167-00 as its share of contribution to be paid to Goa Infrastructure Development Co. Ltd. for construction of the new Usgao bridge. The Assessee claimed to have made this contribution at the bidding of Government of Goa, who had asked mining companies in and around Usgao to contribute towards

construction of the bridge since it would be used by them for transportation of mineral ore. The Assessee claimed this contribution as a revenue expenditure. The Assessing Officer as well as the CIT (Appeals) in the Assessee's appeal did not accept the treatment of this expenditure as revenue expenditure; they treated it as capital expenditure. The ITAT was of the view that until the new bridge came into operation, there was a long line of trucks waiting on either side of the existing bridge reducing the number of trucks that could make trips per day, and that after the new bridge was commissioned, loaded as well as empty trucks could move in opposite directions, without having to stop or wait for the bridge passage. The ITAT was of the view that the construction of new Usgao bridge had thus resulted in revenue for the Assessee in terms of cost per ton transported as well as increase in the quantity of ore exported/sold. The ITAT, accordingly, held that the expenditure incurred by the company as its share for construction of the new bridge could not be termed as capital expenditure, but was entirely revenue expenditure. The ITAT relied on the Judgment of the Supreme Court in *L.H. Sugar Factory and Oil Mills (P) Ltd. vs. CIT*, [1980] 125 ITR 293 (SC) and a Judgment of Madras High Court in *CIT vs. Coats Viyella India Ltd.*, [2002] 253 ITR 667 (Mad), where a similar contribution for construction of a road to facilitate the business of the Assessee was held to be revenue expenditure. The ITAT was of the view that the fact that such

contribution resulted in a capital asset would not make any difference, because the Assessee was not the owner of such asset.

5. Learned Counsel for the Revenue relies on a decision of Allahabad High Court in the case of *Raza Buland Sugar co. Ltd. vs. Commissioner of Income-Tax Central*, 1980 ITR 817, as well as the case of *Empire Jute Co. Ltd. vs. Commissioner of Income-tax*, [1980] 3 Taxman 69 (SC) to support its contention that the expenditure in the present case was in the nature of capital expenditure.

6. In *Raza Buland Sugar co. Ltd.* (supra), the State Government had introduced a scheme for construction of workmen's staff quarters for which the assessee was to lease out its land near its factory to the U.P. Housing Board. The Government was to contribute some amount for construction of the staff quarters for various factories and the balance was to be borne by the factory owners and contractors. These staff quarters were to remain the property of U.P. Sugar Power Alcohol Housing Board and they were to be leased out to the factory owners on agreed terms and conditions. The assessee claimed the amount it had paid towards its contribution towards the cost of construction of the quarters as revenue expenditure. The assessee relied on the decision of the Supreme court in *Lakshmiji Sugar Mills Co. Pvt. Ltd. vs. CIT*,

[1971] 82 ITR 376, where the Supreme Court, whilst dealing with expenses incurred for repairs of a road, had held that though the assessee enjoyed an advantage of enduring nature, yet the contribution was a revenue expense, because it was spent for facilitating the day-to-day running of the business. The Allahabad High Court held that case to be distinguishable as in that case no asset of an enduring nature had come into existence. The High Court held that in the case before it, the quarters were freshly built and were exclusively used by the assessee and though the assessee was not the owner, it was entitled to its exclusive use for an unlimited period of time. On this reasoning, the Court held the expenditure to be capital expenditure. The Allahabad High Court decision was rendered before the Supreme Court gave its ruling in *L.H. Sugar Factory and Oil Mills (P) Ltd.*, (supra). In that case, the argument of the Revenue was on the same lines as what is proposed in the present case. The argument was that the newly constructed road, though not belonging to the assessee, brought to the assessee an enduring advantage for the benefit of its business and expenditure incurred by it for such road was, therefore, in the nature of capital expenditure. The test laid down by Lord Cave L.C. in *British Insulated and Helsby Cables Ltd.*, (supra) was cited by the Revenue before the Supreme Court. The test was to the effect that 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, there was very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such expenditure as properly attributable not to revenue, but to capital. The Supreme Court held that this test, though well-known for distinguishing between the two kinds of expenditure, was not of universal application, and, as the parenthetical clause showed, it ought to yield where there were special circumstances leading to a contrary conclusion. The Supreme Court held that it was not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. If the advantage consists merely in facilitating the assessee's business operations or enabling management and conduct of the business to be carried on more efficiently or more profitably, while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. These observations of the Supreme Court in *L.H. Sugar Factory and Oil Mills (P) Ltd.*, (supra) completely cover the controversy in the present case.

7. As rightly held by the ITAT, in the present case, the contribution made by the Assessee towards the construction of the new bridge facilitated the business of the Assessee, enabling its being carried on more efficiently or more profitably and yet, at the same time, the fixed capital of the Assessee was left untouched. In the

premises, the expenditure was clearly on revenue account and not on capital account, though it resulted into an advantage of enduring nature for the Assessee.

8. In the case of *Empire Jute Co. Ltd.* (supra), the assessee had purchased what were called “loom hours” from four different jute manufacturing concerns. (There was a working time agreement between different jute manufacturers restricting the number of working hours per week for which each mill could work its looms. The transferor mills had transferred their working hours to the assessee mill.) The argument of the revenue before the Supreme Court was that by purchase of loom hours, the assessee had acquired a right to produce more than what it otherwise would have been entitled to do and this right to produce additional quantity of goods constituted addition to, or augmentation of, its profit making structure. The Supreme Court did not accept this contention. The Court held that what the assessee acquired was not a profit-making apparatus; there was no enlargement of the permanent structure of which the income would be the produce or fruit. The Court held that what the assessee acquired was merely an advantage in the nature of relaxation of restrictions on working hours imposed by the working time agreement, so that it could operate its profit-earning structure for a longer number of hours. The Supreme Court considered in this context the test formulated by Lord Clyde in

Robert Addic & Sons Collieries Ltd. vs. Inland Revenue, 8 TC 671, namely, whether the expenditure laid out was a part of the process of profit-earning or, on the other hand, was capital outlay, i.e. for acquisition of property or rights of permanent character the possession of which was a condition of carrying on the trade at all. The Supreme Court, applying the test, held that the payment made by the assessee for purchase of loom hours was expenditure laid out as part of the process of profit earning; what was expended was part of the cost of operating the profit-earning apparatus and was clearly in the nature of revenue expenditure. It is difficult to see how this case assists the Revenue in the present matter. Here, the Assessee, by spending for construction of the new bridge, had not acquired any property or right of permanent character the possession of which was a condition of carrying on its trade at all. What it thereby achieved was reduction of the cost of operating its profit-making apparatus. It was, thus, in the nature of expenditure as part of the process of profit earning, as explained by the Supreme Court in *Empire Jute Co. Ltd.* (supra).

9. Accordingly, there is no merit in the Appeal. No substantial question of law arises for determination of this Court. The Tax Appeal is, accordingly, dismissed.

Nutan D. Sardesai, J.

S.C. Gupte, J.