

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.1765 OF 2016

The Pr.Commissioner of Income-Tax-14 ... Appellant

V/s.

Indian Oil Corporation Ltd. ... Respondent

Mr.Suresh Kumar for the Appellant.

Mr.R.Murlidhar with Mr.Atul Jasani for the Respondent.

**CORAM : AKIL KURESHI AND
B.P.COLABAWALLA, JJ.**

DATE : FEBRUARY 11, 2019.

P.C.:-

1. This appeal is filed by the Revenue challenging the judgment of income Tax Appellate Tribunal ("the Tribunal" for short) dated 24th February, 2016.

2. Following question was presented for our consideration:-

"Whether on the facts and circumstance of the case and in law, the Tribunal correct in holding that the expenditure incurred by the assessee toward the grant-in-aid to the school/institution are allowable under section 37(1) of the Act and the provision of section 40A(9) are not attracted?"

3. Brief facts are as under:

Respondent-Indian Oil Corporation Limited (“IOC” for short) is engaged in oil exploration and refining business. It has its installation at various places. In the return filed by the assessee for the assessment year 2006-07, the Assessing Officer noticed that assessee had claimed deduction of the amounts spent by the assessee in either setting up or providing grant-in-aid in Kendriya Vidyalaya Schools where students of the employees of the assessee-company would receive their basic education. The Assessing Officer was of the opinion that the claim would be hit by sub-section 9 of Section 40A of the Income Tax Act, 1961 (“the Act” for short). The Tribunal by the impugned judgment allowed the assessee's appeal and held that the expenditure was allowable in terms of Section 37(1) of the Act. The Tribunal referred to earlier judgment of this very assessee rendered by the Tribunal in which detailed reference was made to various decisions of different High Courts including this Court.

4. At the outset, we may record that against the judgment of the Tribunal case of this very assessee for the earlier assessment

year 2005-06, the question does not appear to have been carried in appeal. No reasons are set forth why in the present year the revenue was of the opinion that appeal should be filed before the High Court. Be that it may, independently also we have examined the facts and materials on record. Undisputed fact is that the assessee had incurred the expenditure in question for providing basic education to the children of the employees. The revenue's objection to such expenditure being allowed in views of Section 40A(9) of the Act was overruled by the Tribunal holding that the same was not towards contribution to any fund. The Tribunal was of the opinion that the expenditure could be stated to have been incurred for the purpose of business of the assessee. In the process, the Tribunal referred to and relied upon various judgments of the different High Courts touching on similar issue. We notice that the Kerala High Court in case of **P. Balakrishnan, Commissioner of Income-Tax Vs. Travancore Cochin Chemicals Ltd.**¹ had examined whether the amounts spent by the assessee towards contribution to school in which children of the employees were studying, would be hit by

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Section 40A(9) of the Act and therefore, not allowable as deduction under Section 37 of the Act. The High Court had allowed the expenditure and held and observed as under:-

“13. Learned senior counsel for the Revenue placed reliance on the decision of the Calcutta High Court in [CIT v. India Tobacco Company Ltd.](#) [1978] 114 ITR 182. There the assessee-company constructed a hospital. At the time when the hospital was ready, the Employees' State Insurance Scheme came into operation and the Government of Bihar required the hospital. Some negotiations had taken place between the assessee and the Government and also the workers' union. On the basis of the said settlement, the assessee had given an amount of Rs. 50,000 to the Government for the purchase of equipment for the hospital. The company had two kinds of employees, viz., those who were covered by the provisions of the Employees' Insurance Scheme which provides for hospital benefits and also employees who were not covered by the scheme. By making the payment of Rs. 50,000, the company obtained a privilege of getting its employees who were not covered by the provisions of the Employees' Insurance Scheme, treated in the above hospital. There it was held that the assessee by making the above one lumpsum payment, not only got rid of a liability to make recurring annual payments for the treatment of its workers who were not covered by the State Insurance Scheme at the hospital of the Government but also obtained this advantage or privilege for an indefinite period, and hence the expenditure in question was capital in character and hence

not admissible for deduction under [Section 37\(1\)](#) of the Act. The facts of the above case do not have any similarity with the facts of the present case and the principles laid down in the above case have no application. In the case in hand, the expenditure met by the assessee was wholly and exclusively for the welfare of its employees and also for carrying on the business of the assessee-company more efficiently by having a contented labour force. It was neither a donation covered under [Section 40A\(9\)](#) nor of a capital in nature not covered under [Section 37\(1\)](#) of the Act. Hence, the Tribunal is fully justified in allowing the above expenditure towards contribution for the running of the FACT school, as an expenditure for the smooth functioning of the business of the assessee and also an expenditure wholly and exclusively for the welfare of the employees of the assessee and thus allowable under [Section 37\(1\)](#) as well as [Section 40A\(10\)](#) of the Act. Thus questions Nos. 1 to 3 are answered in favour of the assessee and against the Revenue.”

5. Similarly, Bombay High Court in case of **Commissioner of Income Tax Vs. Bharat Petroleum Corporation Limited**¹ had occasion to examine whether the expenditure incurred by the assessee in establishing a club to carry on welfare activities can be claimed by way of expenditure under section 37(1) ignoring the limitation contained under Section 40A(9) of the Act. The

1 252 ITR 43

High Court while dismissing the revenue's appeal and approving the view of the Tribunal in this context observed as under:-

“6. Bharat Petroleum Corporation is a Central Government undertaking. It has incorporated a club, essentially to carry on staff welfare activities. Under Clause 28, Bharat Petroleum Corporation Limited had a right to issue directives to the club which were binding on the club. At times, the members of the club, who were the employees of Bharat Petroleum Corporation, took part in tournaments held outside the club premises like Times shield in cricket. On such occasions, the assessee-Corporation used to reimburse expenses incurred by the club. This is the finding of fact recorded by the Tribunal. In the circumstances, Section 40A(9) is not applicable. No substantial question of law arises. Hence, our answer to the aforesaid question No. 2 is in the negative, i.e., in favour of the assessee and against the Department.”

6. Under the circumstances, we see no error in the view of the Tribunal. No question of law arises. Income Tax Appeal is dismissed.

(B.P.COLABAWALLA,J.)

(AKIL KURESHI,J.)

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