Commissioner of Income-tax Vs. Development Trust Pvt. Ltd.

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Court : Allahabad

Decided On : Sep-04-1991

Reported in : (1992)105CTR(All)121; [1992]198ITR766(All)

Judge : A.P. Misra and ;R.R. Misra, JJ.

Acts : Income Tax Act, 1961 - Sections 37

Appeal No. : Income-tax Reference No. 1024 of 1978

Appellant : Commissioner of Income-tax

Respondent : Development Trust Pvt. Ltd.

Judgement :

R.R. Misra, J.

1. This income-tax reference relates to three assessment years 1967-68. to 1969-70. The assessee, a private limited company, carried on a business in colonisation during the years in dispute. The assessee had constructed a school building known as Chandra Balika Vidyalaya in a colony established by it. The total cost of construction of the building was Rs. 76,060 which was debited as business expenditure spread over the three years in dispute. The Income-tax Officer disallowed this expenditure holding that it was capital expenditure. On appeal, the Appellate Assistant Commissioner allowed the appeal. He agreed with the

contention of the assessee that, in the layout plan of the colony, it was necessary to leave space for the construction of the school building. He, however, took the view that since there was nothing to show that the construction of the school building by the company was essential for the business of the assessee, he confirmed the disallowance of this expenditure claimed by the assessee. The matter was taken in further appeal before the Income-tax Appellate Tribunal which has allowed the appeals of the assessee for all the three years in question by holding that the expenditure was revenue in nature. Aggrieved, the Commissioner of Income-tax has come in reference to this court. The Tribunal has sought our opinion on the following question :

' Whether, in the facts and circumstances of the case, was the expenditure incurred in the construction of school building in the colony was a capital expenditure or an expense of revenue nature ?'

2. We have heard learned standing counsel appearing for the Commissioner of Income-tax who has tried to persuade us to take the view as has been adopted by the Appellate Assistant Commissioner. We, however, find that, on appraisal of facts, the Income-tax Tribunal has recorded the findings in the following words :

' In our opinion from this it can be inferred that the assessee-company did not derive an enduring benefit to itself from the school building and that the advertisement terms regarding provision of school in the advertisement bills clearly indicate that it was presented to the prospective purchasers that the facilities of the school would be made available in the colony in question. We see no force in the learned Departmental representative's argument that even if the amenity of a school had been assured at the advertisement stage, it would have been enough, if the assessee had just left an open space in the colony without constructing the school building as such. We agree with the assessee that the provision of various amenities would persuade the prospective buyers to purchase plots in the colony in question and in any case the commercial expediency has to be determined from the angle of the assessee as a business and it is not, in our opinion, for the Department to suggest whether the provision of school building instead of mere site therefor was or was not commercially expedient, in order to boost up the business of sale of plots in the new colony established by the assessee. In the end, the learned Departmental representative suggested that the expenditure on construction of the school building had been incurred by the assessee only with a view to earn a good name and to satisfy the ego of one of the directors of the company, namely, Shri Vichag. We see no force in this contention in view of the circumstances spelt out above.'

3. In view of the said finding recorded by the Income-tax Appellate Tribunal that the provision for school building was in the nature of an amenity which would persuade prospective buyers to purchase plots in the colony in question and also the further finding of fact recorded by the Income-tax Appellate Tribunal that it was as a matter of commercial expediency which was to be determined from the angle of the assessee, that the said building was constructed in order to boost the business of sale of plots in the new colony established by the assessee, we find that the Income-tax Appellate Tribunal was right in law in holding that the expenditure in question was revenue in nature and was not in the nature of capital expenditure as contended by learned standing counsel. We, therefore, answer the question referred to us by holding that the expenditure in question was revenue in nature and not a capital expenditure, i.e., to say in favour of the assessee and against the Department with costs of Rs. 300 payable by the Department to the assessee.