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Court : Income Tax Appellate Tribunal ITAT Mumbai

Decided On : Dec-13-1990

Reported in : (1991)36ITD620(Mum.)

Judge : O Jain, R Garg

Appellant : inspecting Assistant

Respondent : Hindustan Construction Co. Ltd.

Judgement :

1. to 12. [These paras are not reproduced here as they involve minor issues.] 13. The next ground in assessee's appeal is with regard to its claim for the payment of custom duty amounting to Rs. 4,46,297 on equipments repatriated from Iraq. The assessee is a construction company. It was engaged in execution of construction projects in India as well as abroad. To execute the construction work, it has to shift the plant and machinery and other assets to the work site. Similarly, on completion of the project, these assets are transferred either to other sites or to the Head Office. During the year 1980-81, the assessee had purchased Casagrande Piling Equipment worth Rs. 14,80,022 from M/s. Boodai Trading Company, Kuwait, for executing Daquq Chai work in Iraq. It was used in the said project and the after the work was over, the equipment was brought to India on 6-8-1982. On such repatriation, the Government of India charged customs duty of Rs. 4,46,297 which, though was capitalised in assessee's books of accounts, was claimed to be revenue expenditure in the assessment proceedings. It was not allowed by the Assessing Officer and we find no discussion in the order of assessment on this

point. The CIT(A) upheld the disallowance on following the judgment of the Supreme Court in the case of Sitalpur Sugar Sugar Works Ltd. v. CIT [1963] 49 ITR 160 as by shifting of the machines to another site the assessee had acquired an advantage which enabled the assessee to prosper and gave the assessee an enduring benefit.

14. The learned counsel for the assessee submitted that the decision of the Supreme Court in Sitalpur Sugar Works Ltd.'s case (supra) has no application to the facts of this case. By the very nature of the business of the assessee, it has, as a matter of routine, to shift the machinery to and fro the work site. It was not a shifting of a permanent character to one place for getting better advantage as it was in the case before the Supreme Court. The shifting was for the user of the machinery and for efficiently carrying on the business of construction. The advantage, he submitted, was towards revenue field and not capital and, therefore, even though it was enduring in nature, it would be an allowable revenue expenditure in view of the ratio laid down by the Supreme Court in Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1/3 Taxman 69. He further equated the case of the assessee to a circus when also the apparatus and equipments are shifted from place to place and the expenditure on such shifting was considered to be an allowable expenditure by the Calcutta High Court in CIT v. Hind Construction & Engg.Co. Ltd. [1983] 13 Taxman 218 [1984] 147 ITR 513.

15. The learned Departmental Representative, on the other hand, supported the order of the CIT(A) and submitted that when the work was over in Iraq, the machinery remained of no use in Iraq and, therefore, by shifting it to India, the assessee had acquired a benefit of enduring nature which was towards capital field. The facts of this case, he submitted, are exactly similar to the case before the Supreme Court in the case of Sitalpur Sugar Works Ltd. (supra), referred to by the CIT(A). The customs duty paid by an asses see for acquiring the capital asset would be a part of the cost of the equipment of the assessee and in similar way, the customs duty paid by the assessee when the equipment is imported to India for the first time would also be capital in nature. Proceeding on this basis, he supported the capitalisation of the amount in the assessee's books of account.

16. We have consider the rival submissions. There is no dispute in this case that the equipments were purchased by the assessee in Iraq ; they were used as such in its business of construction in Iraq ; and when the work was over, they were imported to India in a used condition.

This is a natural course of assessee's business. It has to carry and bring back various equipments for executing the work at site. Where plant and machinery are erected for the first time, any expenditure incurred in respect thereof would undoubtedly be capital in nature as it would be for acquiring the fixed assets which form the very source out of which income earning transactions are to be carried on. The same would be the position where the assessee incurs expenditure for purchasing outright an existing factory for the purposes of running it itself. Again, in a case where there is a substantial expansion of the fixed capital equipments by way of addition to an existing factory, the expenditure involved in putting up the additional plant or machinery would be capital expenditure. In reality the expenditure incurred by an assessee for bringing the capital equipments in existence till it is put to use would also be capital outlay, for example, the transport charges, the interest on borrowings, travelling expenses, etc. Once, however, the asset is acquired or the plant and machinery is erected and put to use, any expenditure incurred by the assessee thereafter in connection with such asset would be on revenue account as in that case, the expenditure would be for the user of the capital asset and not an expenditure which would be towards capital field. Enduring benefit in both the cases would be there, but in one case it was for the user of the capital asset, a sort of an expenditure incurred in the course of carrying on day-to-day operations of the business and in the other case, it would be for acquisition and bringing into existence a capital asset.

17. As held by Their Lordships of the Calcutta High Court in the case of Hind Construction & Engg. Co. Ltd. (supra), the question whether a particular expenditure is a revenue expenditure incurred for the purpose of the business must be determined on a consideration of all the facts and circumstances of the case. The question must be viewed in the larger context of business necessity or expediency. If the outgoing or expenditure is so related to the carrying on or conduct of the business that it might be regarded as an integral part of the profit

earning process and not for the acquisition of an asset or right of a permanent character, the expenditure can be regarded as revenue expenditure. In that case also, the assessee was engaged in executing heavy engineering works. It had spent a sum of Rs. 12 lakhs on erection charges to fix the machinery at site. The Tribunal held that the assessee's business was comparable with that of a travelling business like a circus and the expenditure on fixing the machinery for a temporary period was wholly and exclusively laid out for the purpose of carrying on the business and was of a revenue nature and on a reference, the High Court upheld the view taken by the Tribunal by observing that the fact that there was some incidental advantage of some permanent nature was of no consequence in determining whether the expenditure should be allowed or not and that the expenditure was incurred with a view to carry on the business more efficiently.

18. The Supreme Court in the case of Sitalpur Sugar Works Ltd. (supra), upon which reliance is placed by the revenue, held that there could be no difference between an expenditure incurred for acquiring an additional plant, which was capital in nature and an expenditure incurred in dismantling or shifting of an existing plant to a better site. In the case before the Supreme Court, the factory was shifted from Sitalpur, a place suffered from ravage of floods and as a consequence sugar-cane of good quality in sufficient quantity became unavailable at that place. In that context, it was held that the shifting was with a view to improve the business. There the shifting gave an enduring benefit to the assessee of a permanent character and in a capital field. The shifting of plant and machinery at a better site was considered to be an enduring benefit to the assessee. As clarified by the Supreme Court in the latter decision of Empire Jute Co. Ltd.'s case (supra) that it is not every advantage of enduring nature acquired by the assessee brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where there is the advantage in the capital field that expenditure can be disallowed on the application of this test. In the present case, as stated above, the shifting of the plant and machinery from one place to another is a part of carrying on the business operations of the assessee and it has to be by necessity transferred from place to place to execute the construction work. The expenditure incurred by the assessee in transferring the plant and machinery or equipments would be an

expenditure incurred by the assessee in the normal course of business.

The customs duty in this case was paid by the assessee due to transportation of the machinery from Iraq to India. It was a transportation of the used machinery by the assessee from one place to another and, therefore, by incurring this expenditure by the assessee, there was no increase in the value of the asset or the capacity of the asset. There was no advantage in the capital field which could be said to be of enduring nature for treating the same as capital expenditure.

Looking to the facts and circumstances of the case, we are of the opinion that the expenditure incurred by the assessee was an allowable deduction and we direct the allowance thereof. The assessee succeeds on this ground. Depreciation allowed with respect to this sum shall be withdrawn accordingly.

19. and 20. [These paras are not reproduced here as they involve minor issues.]

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