

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUDHAKAR**
and
THE HONOURABLE Ms.JUSTICE **K.B.K.VASUKI**

Tax Case (Appeal) No.1466 of 2007

Commissioner of Income Tax
Chennai.

.. Appellant

versus

M/s.Southern Petrochemical Industries
Corporation Ltd.,
No.88, Mount Road, Chennai - 600 032.

.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 07.06.2007 made in I.T.A.No.366/Mds/2004 on the file of the Income Tax Appellate Tribunal 'C' Bench.

For Appellant : Mr.J.Narayanasamy
Standing Counsel for Income Tax

For Respondent : Mr.R.Vijayaraghavan

J U D G M E N T

(Judgment of the Court was delivered by **R.SUDHAKAR,J.**)

This Tax Case (Appeal) filed by the Revenue as against the order of the Income Tax Appellate Tribunal was admitted by this Court on the following substantial questions of law:

"1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the expenses incurred under the head 'market research' can be treated as revenue, when the assessee had not furnished any details, and when the market research is for entry into new territories giving rise to an enduring benefit?"

2. Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the expenses incurred under the head 'market research' can be treated as revenue, when the Supreme Court has held that the expenditure on initial outlay or extension of a business or substantial replacement, as a capital expenditure in the case of Assam Bengal Cement Company Ltd. (27 ITR 34)?"

2. The brief facts of the case are as follows:

For the assessment year 1998-99, the assessee filed its return of income claiming a sum of Rs.75,91,000/- as revenue expenditure

under the head 'market research'. The said expenditure was disallowed by the Assessing Officer, which resulted in the filing of the appeal by the assessee before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) accepting the contention of the assessee allowed the appeal holding that since the assessee had already in the business of supply of LPG Cylinders, the marketing research expenses for extending into new territories could be treated as revenue expenditure. Aggrieved by the same, the Revenue preferred an appeal before the Tribunal and the Tribunal dismissed the same, thereby confirmed the order of the Commissioner of Income Tax (Appeals.) As against the said order of the Tribunal, the Revenue is before this Court.

3. Both the learned Standing Counsel appearing for the appellant/Revenue and the learned counsel appearing for the respondent/assessee submit that the issue involved in this Tax Case (Appeal) is covered by a decision of this Court dated **24.2.2015 in T.C.(A)No.959 of 2007 (Commissioner of Income Tax, Chennai V. M/s.Saka Marketing Services P. Ltd.)**.

4. It is seen that in the above-said decision, this Court, following the decision of the Gujarat High Court, in the case of **Commissioner of Income Tax – Vs – Suhrid Geigy Ltd. (1996 (220) ITR 153 (Guj)**, held as follows:

"9. Similar issue arose before the Gujarat High Court in the case of Commissioner of Income Tax – Vs – Suhrid Geigy Ltd. (1996 (220) ITR 153 (Guj)), wherein, the Gujarat High Court considering the decision of the Supreme Court in Alembic Chemical Works Co. Ltd. v. CIT [1989] 177 ITR 377 (SC) held as follows :-

"In Alembic Chemical Works Co. Ltd. v. CIT [1989] 177 ITR 377 (SC) the assessee-company was engaged in the manufacture of antibiotics and pharmaceuticals. It was granted licence for the manufacture of penicillin. Until 1963, it has already made substantial investment of over Rs. 66 lakhs for setting up plant, etc., for the production of penicillin. Initially, the appellant was able to achieve only moderate yields. With a view to increasing the yield, the appellant negotiated with Meiji, a reputed Japanese enterprise whereunder in consideration of a once for all payment of 50,000 US \$, it agreed to supply the assessee a pilot plant, the technical information, know-how and written description of Meiji's process for fermentation of penicillin with a flow sheet of the process in the pilot plant and to

arrange for the training of the appellant's representatives in various plants in Japan at the assessee's expense and advise the assessee in large scale manufacture for a period of two years. The assessee was to get technical know-how confidentially and secretly and not to seek any patent for the process. The assessee's claim for deduction of the sum paid to the Japanese company as revenue expenditure was disallowed by the Department holding that the expenses were capital in nature, for the purpose of setting up a new plant and a new process and for complete replacement of the equipment inasmuch as a new process and new type of plant was to be put up in place of the old process and old plant. The High Court also rejected the assessee's claim. Reversing the decision of the High Court, the Supreme Court observed that there was no material before the Tribunal to come to the finding that the appellant had obtained under the agreement a completely new plant with a completely new process and a completely new technical know-how. The business of the appellant was to manufacture penicillin. Even after the agreement, the product continued to be penicillin. There was no material before the Tribunal that the area of improvisation was not part of the existing business.

There was no material to hold that it amounted to a new or fresh venture. What was stipulated was an improvement in the operations of the existing business and its efficiency and profitability not removed from the area of day-to-day business of the appellant's established enterprise. The financial outlay under the agreement for the better conduct and improvement of the existing business was revenue in nature and was allowable deduction in computing the business profits of the appellant.

In coming to this conclusion, the court also noticed the principles which should govern while deciding such issues by the courts.

The most important aspects relevant for the present purpose which can be culled out from the above discussion is that where expenses are incurred in areas which supplement the existing business and is not a fresh or new venture and agreement of acquiring technical know-how pertain to product already in the line of the established business which was intended to improve the operations of the existing business, its efficiency and profitability from the area of day-to-day business of the appellant's established enterprise's expenses be treated as revenue and not capital. On the other hand, if the technical know-how is acquired for the purpose of

establishing altogether a new or fresh venture, launching of a new enterprise, the same expenditure may be treated as capital and not revenue. In such cases the test of enduring benefit might break down. That is to say, the argument that the knowledge having become once part of the knowledge bank of the acquirer, cannot be taken back in a sense and will always remain with the assessee and is enduring. But looking to the business realities, namely, the purpose for which knowledge has been acquired becomes determining the true character of the expenditure."

10. From the decision as extracted above, it is clear that the main parameters that are necessary for the expense to be treated as revenue expenditure is where expenses are incurred in areas which supplement the existing business and is not a fresh or new venture and agreement relates to revenue and the said activity is for the purposes of improving the operations of the existing business, its efficiency and profitability from the area of day-to-day business of the appellant's established enterprise's, expenses be treated as revenue and not capital.

11. In the case on hand, a careful reading of the order of the Tribunal and the facts as narrated above, it is

clear that there is absolutely no justification for the Department to hold that there was a new line of business on which there occurred a loss. The parameters enunciated in the decision in Suhrid Geigy Ltd. Case (supra) is squarely attracted to the facts of the present case, justifying the loss of the assessee as a business loss, as admittedly, the assessee is in the business of marketing bulk drugs, formulations, etc., and one of its ventures has ended in a loss and that loss is attributable to business and it cannot be deemed to be a new enterprise and a capital expenditure.

12. For all the reasons stated above and in the light of the parameters enunciated above for treating a particular expenditure as capital or revenue, this Court is of the considered opinion that the order passed by the Tribunal requires no interference. Accordingly, the substantial question of law is answered in favour of the assessee/respondent and against the appellant/Revenue."

5. Following the above-said decision of this Court dated 24.2.2015 in T.C.(A)No.959 of 2007, this Tax Case (Appeal) stands dismissed. No costs.

Index: Yes / No
Internet: Yes / No
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(R.S.,J.) (K.B.K.V.,J.)
30.06.2015

To

1. The Income Tax Appellate Tribunal, Madras 'C' Bench.
2. The Commissioner of Income Tax (Appeals), V, Chennai.
3. The Deputy Commissioner of Income Tax, Company Circle – VI(3), Chennai.

R.SUDHAKAR,J.
AND
K.B.K.VASUKI,J.

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