

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

INCOME TAX APPEAL No. 22 of 2003

C.I.T., UDAIPUR
V/S
MS. HINDUSTAN ZINC LTD., UDAIPUR

Mr. K.K. Bissa, for the appellant.

Mr. Anjay Kothari, for the respondent.

Date of Order : 4.3.2008

HON'BLE SHRI N P GUPTA, J.
HON'BLE SHRI DEO NARAYAN THANVI, J.

ORDER

This appeal has been filed by the Revenue, against the order of the learned Tribunal dated 24.04.02. The appeal was admitted on 27.02.03, without framing any substantial question of law. Then, vide order dated 14.11.05, the substantial question of law was framed as under:

"Whether on the facts and in the circumstances of the case the tribunal is right in law particularly keeping in view the legislative history of Nationalization, first acquisition and later nationalization of M/s Metal Corporation of India Ltd. and consequently appointing assessee as Administrator, that the amount of Rs.122.79 lacs paid to M/s Metal Corporation of India for period 10th January 1966 to 1st of August 1966 and further amount required to be paid on 2.8.76 to the aid M/s Metal Corporation of India is a revenue expenditure allowable under Section 43(3) of the Income Tax Act?"

Thus, the only question, which requires to be gone into

by us is, as to whether the amount of Rs.122.79 lacs, paid to M/s Metal Corporation of India for the period 10.01.66 to 01.08.66, and further amount required to be paid on 02.08.76, to the said M/s Metal Corporation of India, is a revenue expenditure?

The necessary facts are, that a company M/s Metal Corporation of India was taken over, under an Ordinance, which Ordinance was quashed, and fresh Ordinance was issued, and then, another Act was passed. For the present purposes, it would suffice to say, that during this period, an Administrator was appointed, then the assessee, Hindustan Zinc Ltd., was put in charge of the establishment. Then, the matter of payment of compensation was gone into, and as laid down in Sections 10 and 11 of the Metal Corporation (Nationalization and Miscellaneous Provisions) Act, 1976 (hereinafter referred to as the Act), the Metal Corporation of India was paid a total compensation of Rs.320.79 lacs, for acquisition of the undertaking, and the details were worded out as under:

1. For the deprivation of the management of Metal Corporation of India from 22.10.65 to 02.08.76 @ Rs.11.39 lacs per annum.
2. For the acquisition of the undertaking of Metal Corporation of India @ Rs.198.00 lacs.

It is not in dispute, that from 22.10.65 itself, the Metal Corporation of India was deprived of its management. The question came up as to whether the aforesaid expenditure is allowable as revenue expenditure, and shall be considered as revenue expenditure, or capital expenditure, and the learned CIT treated the entire amount as capital expenditure. Then, in appeal, the learned ITAT found, that out of the amount of Rs.320.79 lacs, the amount of Rs.198.00 lacs was obviously a capital expenditure, but then, the another sum of Rs.122.79 lacs, being deprivation charges, @ Rs.11.39 lacs per annum, was in the nature of revenue expenditure, as the assessee had taken over the business and management of Metal Corporation of India, during the period of litigation, before final acquisition. This finding, which is under challenge, is comprised of the substantial question of law as framed.

We have heard learned counsel for the parties and examined the material available. In our view, from the calculation of the compensation, as broken up, it is clear, that Rs.198.00 lacs was paid for acquisition of the undertaking of the Metal Corporation of India. Obviously, that was a capital expenditure, which is no more in dispute, and so far as that amount is concerned, admittedly, the title passed on, from Metal Corporation of India to the Assessee, only by virtue of Section 7 of the

Act thereof, meaning thereby, that till then, the entire undertaking continued to be the property of the Metal Corporation of India, notwithstanding this, since the Metal Corporation of India was deprived of the management and possession, as Administrator was appointed, who had run the industry, during this intervening period, the Administrator may have earned profit, or may have incurred losses, but then, the fact does remain, that the Metal Corporation of India could not run the undertaking, and earn any income therefrom. As appears, that this factor which has been taken into consideration, and appears to be agreed, that the Metal Corporation of India would have earned the profits @ Rs.11.39 lacs per annum, had it not been deprived of the possession and, therefore, at this stage, it was directed to be compensated for the period, during which it stood deprived of the possession and management.

We may visualize the situation, that if the acquisition would not have gone through, or would have ultimately failed, even then, the Metal Corporation of India would have been entitled to compensation for the deprivation, obviously, in which event, the amount would not have been capable of being described as capital expenditure. Obviously, therefore, if the things went through, then too this part of the amount cannot be said to be the capital expenditure. Yet, another aspect of the matter is, that no part of this amount of Rs.122.79 lacs is shown to have been

intended, or have been contended by the parties, to be being paid towards consideration of transfer of title, or property, of the undertaking of the Metal Corporation of India.

In that view of the matter, in our view, considering from any stand point, this amount cannot be said to be a capital expenditure, and in our view, the learned Tribunal has rightly found so. We are at one with the finding recorded by the learned Tribunal. The appeal, thus having no force, is dismissed.

(DEO NARAYAN THANVI), J.

(N P GUPTA), J.

Ms rathore