

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 31ST JANUARY 2008 / 11TH MAGHA 1929

ITA.No. 123 of 2001()

ITA.297/COCH/1994 of I.T.A.TRIBUNAL,COCHIN BENCH
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APPELLANT:APPELLANT:

THE COMMISSIONER OF INCOME TAX, TRICHUR.

BY ADV. SRI.P.K.R.MENON(SR.),SC FOR IT
SRI.GEORGE K. GEORGE, SC FOR IT

RESPONDENTS:

THE CO-OPERATIVE SUGARS LTD., MENON PARA, PALAKKAD.

BY ADV. SRI.B.S.KRISHNAN (SR.)
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 31/01/2008, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C .N. RAMACHANDRAN NAIR &
T.R. RAMACHANDRAN NAIR, JJ.

I.T.A. No. 123 OF 2001

Dated this the 31st day of January, 2008

JUDGMENT

C.N. Ramachandran Nair,J.

This is an appeal filed by the Revenue under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal rejecting departmental appeal. The question raised is whether the contribution of Rs. 25 lakhs paid by the assessee to the State Irrigation Department being part of cost incurred for cement lining of a irrigation canal serving sugarcane cultivators is allowable as revenue expenditure under Section 37(1) of the I.T. Act. We have heard senior counsel appearing for the appellant and counsel appearing for the respondent-assessee.

2. The Tribunal has extracted the minutes of the Board Meeting of the respondent-assessee which explains the nature of contribution made. It is clear from the minutes that the amount was paid at the suggestion of the Minister to the assessee to meet the cost of

expenditure incurred by the Irrigation Department for improving an irrigation canal which supplies water to an area under sugarcane cultivation. The total cost was stated to be Rs. 112 lakhs and the assessee's contribution was Rs. 25 lakhs. The canal until improvement under the scheme was a FL canal and the purpose of cement lining was to prevent loss of water in transit thereby providing better supply of water for irrigation of farm lands mainly cultivated with sugarcane. Since sugarcane is the raw material of the assessee and since extensive cultivation of sugarcane ensures supply to the assessee, the assessee claimed the expenditure as a business expenditure allowable under Section 37(1) of the I.T. Act. However, the assessing officer denied the claim on the ground that it is a capital expenditure not allowable under Section 37(1) of the Act.

3. On first appeal, the first appellate authority allowed the claim following the decisions of the Supreme Court in L.H. SUGAR FACTORY AND OIL MILLS (P) LTD. V. C.I.T., 125 I.T.R. 293 (SC), C.I.T. V. ASSOCIATED CEMENT COMPANIES LTD., 172 I.T.R. 257 (SC), and the decision of the Bombay High Court in NATIONAL

ORGANIC CHEMICAL INDUSTRIES LTD. V. C.I.T., 203 I.T.R.

410. On second appeal the Tribunal endorsed the view of the CIT (Appeals) and dismissed the departmental appeal against which this appeal is filed.

4. Senior counsel appearing for the appellant relied on a Full Bench decision of this Court in C.I.T. V. GLENVIEW RUBBER CO.P.LTD., (2007) 291 I.T.R. 1 (Ker.) (FB) and contended that the expenditure is a capital expenditure in nature. However, counsel appearing for the respondent-assessee contended that the decision is not applicable to the facts of this case because it was found by this Court that the assessee in that case has incurred expenditure for construction of a water treatment plant for itself which was a capital asset. It is the contention of the assessee that in this case the assessee had no right over the irrigation canal and the assessee has not created any asset as such. We find force in this contention because it is a case where the assessee has not created any asset and even though it derives benefit out of the same, it is in an indirect manner. The improvement of irrigation canal obviously will lead to increase of water supply for

irrigation to the sugarcane cultivated area. This will necessarily lead to increase in production of sugarcane and there is every reason for the assessee to expect better supply of sugarcane which is its raw material and which is otherwise a scarce commodity as the assessee was not able to utilise its capacity on account of non-availability of sugarcane. Therefore this is a case where the assessee derives the benefit out of the expenditure, but does not create any asset for itself. The Supreme Court has in the decision reported in 124 I.T.R. 1 held that even if enduring advantage is derived from the expenditure incurred, it can still be allowed as a revenue expenditure. We are of the view that the decision of the Supreme Court in L.H. SUGAR FACTORY AND OIL MILLS (P) LTD. V. C.I.T., (1980) 125 I.T.R. 293 squarely applies to the facts of this case because in that case the Supreme Court allowed contribution made by a sugarcane factory for construction of a road which is done at the request of the District Collector. The contribution in this case is also made by the company at the suggestion of the State Minister concerned, who suggested sharing of cost by the company, as it goes to the advantage of the company in the form of better supply of

sugarcane. Therefore we are of the view that the Tribunal is right in holding that the deduction claimed by the assessee was allowable as a revenue expenditure under Section 37(1) of the I.T. Act. The appeal filed by the Revenue is consequently dismissed.

(C.N.RAMACHANDRAN NAIR)
Judge.

(T.R.RAMACHANDRAN NAIR)
Judge.

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