

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

WEDNESDAY, THE 16TH JANUARY 2008 / 26TH POUSHA 1929

ITA.No. 157 of 2000()

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AGAINST THE ORDER DATED / / IN COCH. IN  
ITA.257/1996 of I.T.A.TRIBUNAL,COCHIN BENCH  
.....

APPELLANT:

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M/S.MALABAR & PIONEER HOSIERY (P) LTD.,  
KALLAI ROAD, CALICUT 673 002.

BY ADV. SRI.P.BALAKRISHNAN (E)

RESPONDENTS:

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THE COMMISSIONER OF INCOME TAX,  
CALICUT.

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

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD  
ON 16/01/2008, THE COURT ON 16/01/2008 DELIVERED THE  
FOLLOWING:

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

.....  
I.T. Appeal No.157 of 2000  
.....

Dated this the 16th day of January, 2008.

JUDGMENT

C.N.Ramachandran Nair, J.

This appeal is filed under Section 260A of the Income Tax Act against the order of the Appellate Tribunal confirming the disallowance of preliminary expenditure incurred by the assessee for the construction of a shopping complex. The appellant assessee was originally engaged in hosiery business. However, later assessee stopped the business and besides letting out its buildings, it started construction and letting out of shop rooms. Admittedly the rental income received on shop buildings let out to tenants was treated as income from business. During the accounting year relevant for the assessment year 1991-92, the assessee incurred an expenditure of Rs.49,687/- towards preliminary expenditure for construction of a shopping complex. The various items of expenditure incurred in this behalf are remuneration for soil testing, fee paid to Calicut Development Authority and to the Corporation of Calicut for approval of plan and fee paid to the Architect for preparation of plan. Even though the original assessment was completed allowing the claim, the assessment was later

rectified under Section 154 and disallowance was made on the ground that expenditure claimed was capital in nature. The assessee carried the matter in appeal before the Commissioner of Income Tax who rejected the claim. The result of second appeal filed before the Tribunal was also not different.

2. The questions raised as substantial questions of law in this appeal are whether rectification carried out under Section 154 is justified as the issue is a debatable one and whether the finding that expenditure is capital in nature is correct or not. We have heard counsel for the appellant and Standing Counsel for the Income Tax Department.

3. Counsel for the assessee has relied on the decision of the Supreme Court in EMPIRE JUTE COMPANY LTD. V. COMMISSIONER OF INCOME TAX (1980) 124 ITR 1 and contended that expenditure has not resulted in any enduring benefit to the assessee and so much so, it was not capital in nature. Standing Counsel on the other hand submitted that expenditure is prima facie capital in nature as it is preliminary expenditure incurred for construction of a shopping complex which was later given up by the assessee on account of shortage of funds. Standing Counsel also relied on the decision of the Bombay High Court in TRADE WINGS LTD. V. COMMISSIONER OF INCOME TAX (1990) 185 ITR 267 and that of the Gujarat High Court in SOURASHTRA CEMENT & CHEMICAL

INDUSTRIES LTD. V. COMMISSIONER OF INCOME TAX (1992) 196 ITR 237.

3. The first question to be considered is whether the issue raised is a debatable one barring rectification under Section 154 of the Income Tax Act. In order to consider whether the issue is debatable or not, the nature of expenditure claimed has to be considered. It is clear from the nature of expenditure that each item of expenditure is incurred specifically for the purpose of setting up of a shopping complex. In fact the assessee's decision to set up a shopping complex is clear from the fact that concrete steps were taken such as preparation and approval of plan, soil testing for the purpose of deciding the foundation work etc. The project was abandoned for want of funds. If the project was taken up and completed, there can be no doubt that the item of expenditure would have gone to add to the cost of construction entitling only for depreciation. The preliminary expenditure incurred for construction of a shopping complex cannot be anything other than a capital expenditure as it goes to add to the capital of the project. We do not think that two opinions are possible on this. Obviously expenditure which is in the form of preliminary expenditure for construction of a shopping complex is capital in nature and cannot be treated as revenue expenditure by any stretch of imagination. Therefore, rectification carried

out under Section 154 of the Income Tax Act is perfectly justified. We are, therefore, of the view that the Tribunal rightly dismissed assessee's appeal on the validity of rectification as well as against disentitlement for the claim. We accordingly answer both the questions raised in favour of the department and against the assessee and consequently dismiss the appeal.

C.N.RAMACHANDRAN NAIR  
Judge

T.R.RAMACHANDRAN NAIR  
Judge

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