

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.96 OF 2002

Jetha Properties Private Limited)
Opp. Byculla, Goods Depot, Dr. Ambedkar)
Road, Mumbai – 400 012)Appellant

V/s.

The Commissioner of Income Tax)
City IV, Aayakar Bhavan, Maharshi Karve)
Road, Mumbai – 400 020)Respondent

Ms. Dinkle Hariya with Mr. Vipul Joshi and Ms. Namrata Kasale and
Ms. Priyanshi Desai, for the Appellant.
Mr. Suresh Kumar, for the Respondent.

CORAM: K. R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 9th DECEMBER, 2021.

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.)

1 On 28th July 2004, this Appeal was admitted and the
following substantial question of law was framed :-

*“ Whether on the facts and in the circumstances of
the case and in law, the expenditure of
Rs.10,50,000/- incurred by the Appellant for
raising floor height of Godown can be rightly
considered as revenue expenditure as claimed by
the Appellant?”*

2 Appellant was a ware-house keeper. Appellant's ware-house
was at Dr. Ambedkar Road, just next to Jijamata Udyan, Byculla. That area
is prone to severe water logging during monsoon. According to Appellant,
whenever water logging happened, it would damage the goods stored in

the ware-house. Somehow, Appellant was pulling on with its business. One of the biggest customer of Appellant was Bombay Dyeing Manufacturing Company Limited (the Customer). At the relevant time, the Customer was storing its goods in the ware-house of Appellant for the past three or four years and was occupying nearly 90% of the total space available in the ware-house. During the relevant previous year, Appellant had received income of Rs.18,25,137/- from the Customer out of a total income of Rs.19,29,975/-. The goods stored were clothing material manufactured by the Customer for export. On few occasions, due to flooding, the Customer's goods got damaged and the Customer cautioned Appellant that if any remedial measure was not taken, the Customer will have to change its business arrangement with Appellant. On the advice of the Chief Engineer of the Customer, Appellant agreed to raise the floor height by about 18 inches so that whenever water logging happened in monsoon, the water would remain out side the ware-house and will not enter the ware-house and consequently, goods stored will not be affected. The total area of the ware-house was about 31,500 sq.ft. The Customer, in fact, even raised the ware-housing charges from Rs.1.20/- per sq. ft per week to Rs.1.50/- sq.ft. per week when Appellant raised the floor height to preserve the goods of customers, i.e., increase floor height by 18 inches. As it was obviously necessary for Appellant to survive in the business and to conduct its business as a ware-house keeper and though it would

reduce the volume/over all space available within the go-down, Appellant went ahead and incurred costs of Rs.10,70,000/- during Assessment Year 1991-92. Whether it was incurred in the Assessment year 1991-92 or 1992-93 was also the subject matter of dispute between Revenue and Appellant but we are not going into that aspect since that is not a substantial question of law that has been framed while admitting the Appeal. The Court has only to answer whether the expenditure incurred by Appellant for raising the floor height was a revenue expenditure as claimed by Appellant or a capital expenditure as claimed by the Revenue.

3 During the execution of this work, there were issues with the Bombay Municipal Corporation with which we are not concerned.

4 It is Appellant's case that by spending the said amount of Rs.10,70,000/- (Ten lakhs seventy thousand only), Appellant did not bring into existence any new asset.

5 Ms. Hariya submitted that expenditure was wholly and solely incurred to ensure that the existing business with the Customer, which was offering attractive returns to Appellant, was continued uninterrupted. It was also submitted that by incurring this expenditure, Appellant succeeded in tying up with the customer for initial period of four years on enhanced rates of 25%. Ms. Hariya submitted that this expenditure had also not brought to Appellant any benefit or advantage of enduring nature as this expenditure was incurred only from the point of view of the

“goods” stored by the Customer. It was an expenditure which had direct relation to the business with the customer as Appellant also received corresponding increased compensation initially for four years which was more than expenditure incurred.

6 Ms. Hariya, therefore, submitted that as the expenditure was incurred only at the instance of the Customer to meet specific requirement of the Customer and the purpose and object of incurring this expenditure was to ensure continuity of business with the Customer and that to at enhanced rates, the expenditure should be allowed as revenue expenditure.

7 Mr. Suresh Kumar, Counsel for Respondents submitted that

(a) Though there cannot be a straight jacket formula to determine whether the expenditure was a capital expenditure or a revenue expenditure, it would depend upon the fact and circumstances of each case and what the Court has to consider is whether the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage and if it is so, then obviously such an expenditure would not be an expenditure of a revenue nature but it would be a capital nature.

(b) If the expenditure incurred was with a view to bring into existence advantage of enduring nature, it cannot qualify for deduction as revenue expenditure but should be considered as a capital expenditure.

(c) Considering the nature of expenditure incurred, the Assessing Officer, Commissioner of Income Tax (Appeals) and the ITAT were correct in holding that the expenditure incurred by Appellant was a capital expenditure.

8 Both Ms. Hariya and Mr. Suresh Kumar relied upon a judgment of the Apex Court in ***Ballimal Naval Kishore and Another v/s. Commissioner of Income Tax***¹. From *Ballimal Naval Kishore* (Supra), it is quite clear that the test to be borne in mind is that as a result of the expenditure, which is claimed as an expenditure for repairs what is really being done is to preserve and maintain an already existing asset. The object of the expenditure is not to bring a new asset into existence, nor is its object the obtaining of a new or fresh advantage. If the amount was spent only to preserve and maintain the already existing assets that would be a revenue expenditure. In this case, admittedly, there was an asset, i.e., the godown/ware-house, already in existence.

The Apex Court in ***Assam Bengal Cement Co. Ltd., v/s. Commissioner of Income Tax***² relied upon by Ms. Hariya held that if the expenditure is made for the purpose of running the business or working it with a view to produce the profit, it would be a revenue expenditure.

9 The decision of the Supreme Court in ***CIT v/s. Ciba of India Ltd.***³, relied upon by Ms. Hariya, is an authority for the proposition that

1. (1997) 224 ITR 414 (SC)

2. (1955) 27 ITR - 34

3. (1968) 69 ITR 692

where an expenditure is incurred while the business is going on and is not incurred either for extension of the business or for the substantial replacement of its equipment, the aim & object of the expenditure would determine its character and nature. The source or the manner of the payment would then be of no consequence. Whether the expenditure is so related to the carrying on or conducting of the business that it might be regarded as an integral part of the profit making process, it should be held to be revenue expenditure. However, if the purpose and aim of the expenditure is to acquire an asset or a right of a permanent character, the possession whereof is a condition precedent to the commencement or continuance of the business, the expenditure would be of a capital nature.

Ms. Haria also relied upon (i) ***Bombay Steam Navigation Co. (1953) (P) Ltd. v/s. CIT (1965)***⁴ where the Court held it is not easy ordinarily to evolve a test for ascertaining whether in a given case expenditure is capital or revenue, for the determination of the question must depend upon the facts and circumstances of each case. The Court has to consider the nature and ordinary course of business and the objects for which the expenditure is incurred. Whether a particular expenditure is a revenue expenditure incurred for the purpose of business must be determined on a consideration of principles of commercial trading. The question must be viewed in the larger context of business necessity or expediency.

4. 56 ITR 52 (SC)

(ii) *CIT v/s. Vallabh Glass Works Ltd.*⁵, where the Court held it is now well settled that the question whether a particular expenditure is a revenue expenditure incurred for the purpose of the business 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 may be regarded as an integral part of the profit earning process and not for the acquisition of an asset or a right of a permanent character, the possession of which is a condition precedent to the carrying on of the business, the expenditure may be regarded as revenue expenditure. The Court followed *Bombay Steam Navigation Co. (1953) (P) Ltd. v/s. CIT* (Supra).

Therefore, the test to be applied for finding out whether an expenditure is revenue expenditure or not is to find out whether the expenditure is so related to the carrying on or conduct of the business that it may be regarded as an integral part of the profit earning process. If the expenditure is so connected with the carrying on of the business that it may be regarded as an integral part of the profit earning process, the expenditure cannot be treated as a capital expenditure. In other words, such expenditure is revenue expenditure. There is, however, no doubt that the expenditure incurred for the acquisition of a capital asset or a right of a permanent character or a benefit or advantage of enduring nature, is a capital expenditure. If the expenditure is an integral part of the cost of

5. (1982) 137 ITR 389 (Guj.)

acquisition of a capital asset and not an integral part of the profit earning process, such expenditure can never be treated as a revenue expenditure.

(iii) *Dalmia Jain & Co. Ltd. v/s. CIT*⁶ where the Apex court held where the expenditure laid out for the acquisition or improvement of a fixed assets is attributable to capital, it is a capital expenditure but if it is incurred to protect the trade or business of the assessee then it is a revenue expenditure. In deciding whether a particular expenditure is capital or revenue in nature, what the Courts have to see is whether the expenditure in question was incurred to create any new asset or was incurred for maintaining the business of the company. If it is the former, it is capital expenditure; if it is the latter, it is revenue expenditure.

10 With this position in law let us examine the case at hand. In our view, Appellant by spending the amount of Rs.10,70,000/- did not bring into existing any new asset. The expenditure was incurred wholly and solely to ensure that the existing business with the Customer, which was offering attractive returns to Appellant, was continued uninterrupted. The expenditure incurred by Appellant had direct relation to the business with the customer because Appellant also received corresponding increased compensation from the customer. Appellant also incurred the expenditure, notwithstanding that the volume of the space available in the ware-house would get reduced, for the business with the Customer would survive. There was a benefit by way of continuing business with the

6. (1971) 81 ITR 754 (SC)

Customer or increase in compensation from the Customer. Appellant achieved both these objectives by incurring the expenditure. We are satisfied with the explanation given by Appellant that it was for the purpose of conducting its business and increase in profit. The expenditure so incurred is related to the carrying on or conducting of ware-house business of Appellant and hence, it should be regarded as an integral part of the profit earning process. The expenditure, therefore, cannot be treated as capital expenditure but should be treated as revenue expenditure. The substantial question of law is answered accordingly.

11 Appeal disposed accordingly.

(AMIT B. BORKAR,J.)

(K. R. SHRIRAM,J.)