THE COMMISSIONER OF INCOME-TAX, WEST BENGAL

v.

ROYAL CALCUTTA TURF CLUB

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Income Tax—Expenditure for preservation of business—If wholly and exclusively laid out for the purpose of business—Indian Income Tax Act, 1922 (XI of 1922), s. 10 (2)(xv).

The business of the respondent club was to run race meetings on a commercial scale. The club did not own any horse and therefore did not employ jockeys. It was a matter of some importance to the club that there were jockeys of requisite skill and experience in sufficient numbers who would be available to the owners and trainers because otherwise the running of the race meetings would not be commercially profitable and its interest would suffer and it might have had to abandon its business if it did not take steps to make jockeys of the necessary calibre available. Therefore it established a school for the training of Indian boys as jockeys and claimed the sums spent on the running of the school as deductable amount under s. 10 (2)(xv) of the Indian Income Tax Act.

The question was whether in the circumstances of the case the expenditure claimed was one which was wholly and exclusively laid out for the purpose of the respondent's business.

Held, that any expenditure which was incurred for preventing the extinction of a business would be expenditure wholly and exclusively laid out for the purpose of the business of the assessee and would be an allowable deduction.

In the instant case the amount in dispute was laid out wholly and exclusively for the purpose of the respondent's business, because if the supply of jockeys of requisite efficiency and skill failed, the business of the respondent would no longer be possible.

Eastern Investments Ltd. v. *Commissioner of Income-tax, West Bengal*, [1951] S. C. R. 594 and *Commissioner of Income-tax* v. *Chandulal Keshavlal & Co.*, [1960] 38 I.T.R. 601, relied on.

British Insulated and Helsby Cables v. *Atherton*, [1926] A. C. 205, *Morgan* v. *Tate & Lyle Ltd.*, [1955] A. C. 21 and *Boarland* v. *Kramat Pulai Ltd.*, [1953] 2 All. E. R. 1122, discussed.

Strong & Co. v. *Woodifield*, [1906] A. C. 448 and *Smith* v. *Incorporated Council of Law Reporting*, [1914] 3 K.B. 674, referred to.

Ward & Co. Ltd. v. *Commissioner of Taxes*, [1923] A. C. 145, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 419 of 1958.

Appeal by special leave from the judgment and order dated August 20, 1957, of the Calcutta High Court in Income-tax Reference No. 1 of 1956.

Hardyal Hardy and *D. Gupta*, for the appellant.

N. C. Chatterjee, Dipak Choudhri and *B. N. Ghosh*, for the respondent.

1960. November 28. The Judgment of the Court was delivered by

KAPUR, J.—This is an appeal by special leave against the judgment and order of the High Court of Judicature at Calcutta in a reference made by the Income-tax Appellate Tribunal under s. 66(1) of the Income-tax Act. The following question was referred:

"Whether in the facts and circumstances of this case, the Appellate Tribunal was right in holding that Rs. 61,818 spent by the assessee to train Indian boys as jockeys, did not constitute expenses of the business of the assessee allowable under s. 10(2)(xv)?"

which was answered in favour of the respondent. The Commissioner is the appellant before us and the assessee is the respondent.

The respondent is an association of persons whose business is to hold race meetings in Calcutta on a commercial basis. It holds two series of race meetings during the two seasons of the year. The respondent does not own any horses and therefore does not employ jockeys but they are employed by owners and trainers of horses which are run in the races. It is a matter of some importance to the respondent that there should be jockeys available to the owners with sufficient skill and experience because the success of races to a considerable extent depends upon the experience and skill of a jockey who rides a horse in a race. Because it was of the opinion that there was a risk of the jockeys becoming unavailable and that such unavailability would seriously affect its business which might result in its closing

down the business, the respondent considered it expedient to remedy that defect. Therefore in 1948, it established a school for the training of Indian boys as jockeys so that after their training they might be available for purposes of race meetings held under its auspices. The school, however, did not prove a success and after having been in existence for three years it was closed down.

During the year ending March 31, 1949, the respondent spent a sum of Rs. 62,818 on the running of its school and claimed that amount as a deduction under s. 10(2)(xv) of the Income-tax Act and also in the assessment under the Business Profits Tax for the chargeable accounting period ending March 31, 1949. This claim was disallowed by the Income Tax Officer and on appeal by Appellate Assistant Commissioner and also by the Income-tax Appellate Tribunal. At the instance of the respondent the question already quoted was referred to the High Court and was answered in favour of the respondent. This appeal is brought by special leave against that judgment.

The decision under the Business Profits Tax Act will be consequential upon the decision of the deduction under the Income-tax Act. The Tribunal found that it was not the business of the respondent to provide jockeys to owners and trainers, that the jockeys trained in the respondent's school were not bound to ride only in the races run by the respondent and that the benefit, if any, which accrued was of an enduring nature. It also found that the respondent had been conducting race meetings since long, that it was not the case of the assessee that if it did not train jockeys they would become unavailable and that the mere policy of producing efficient Indian jockeys was not a sufficient consideration for treating the expenditure as one incurred for the business of the respondent. For these reasons the expenditure was disallowed.

Before the Appellate Assistant Commissioner, it was contended by the respondent, that the reason for incurring the expenditure was "to promote efficient Indian jockeys" and it was in the interest of the respondent to see that the races are not abandoned on

account of the scarcity of jockeys. In the order of the Tribunal it is stated that this was not the case of the respondent, and therefore when the respondent wanted paragraph 5 of the statement to be substituted by the following:

"It was the case of the assessee that unless it trained Indian Jockeys, time may come when there may not be sufficient number of trained jockeys to ride horses in the races conducted by the assessee."

the Tribunal did not agree to do so.

Counsel for the appellant raised three points before us; (1) The question as to whether an item of expenditure is wholly and exclusively laid out for the purposes of business or not is a question of fact; (2) the connection between an expenditure and profit-earning of the assessee should be direct and substantial and not remote and (3) to be admissible as revenue expenditure it should not be in the nature of a capital expense, i.e., it should not bring into existence an asset of an enduring nature.

As to the first question this court has held in *Eastern Investments Ltd.* v. *Commissioner of Income-tax, West Bengal* (1) that "though the question must be decided on the facts of each case, the final conclusion is one of law". In *Commissioner of Income Tax* v. *Chandulal Keshavlal & Co.* (2), this Court said:—

"Another test is whether the transaction is properly entered into as a part of the assessee's legitimate commercial undertaking in order to facilitate the carrying on of its business; and it is immaterial that a third party also benefits thereby. (*Eastern Investment Ltd.* v. *Commissioner of Income-Tax*, (1951) 20 I.T.R. 1). But in every case it is a question of fact whether the expenditure was expended wholly and exclusively for the purpose of trade or business of the assessee. In the present case the finding is that it was laid out for the purpose of the assessee's business and there is evidence to support this finding."

But those observations must be read in the context. In that case the assessee firm was the Managing Agent of a Company and at the request of the Directors of

(1) [1951] S.C.R. 594, 598. (2) [1960] 38 I.T.R. 601, 610.

the latter agreed to accept a lesser commission for the year of account than it was entitled to. It was found by the Appellate Tribunal there that the amount was expended for reasons of commercial expediency and was not given as a bounty but to strengthen the managed company so that if its financial position became strong the assessee would benefit thereby, and on the evidence the Tribunal came to the conclusion that the amount was wholly and exclusively for the purpose of such business. It was on this evidence that the expense was held to be wholly and exclusively laid out for the purpose of the assessee's business and this was the finding referred to. In that case the Tribunal had not misdirected itself as to the true scope and meaning of the words "wholly and exclusively laid out for the purpose of the assessee's business". In the present case the Income-tax Appellate Tribunal had misdirected itself as to the true scope and meaning of these words. In our opinion, in the circumstances of this case, it cannot be said that the finding of the Tribunal was one of fact.

The question as to whether the expenses of running the school for jockeys is deductible has to be decided taking into consideration the circumstances of this case. The business of the respondent was to run race meetings on a commercial scale for which it is necessary to have races of as high an order as possible. For the popularity of the races run by the respondent and to make its business profitable it was necessary that there were jockeys of requisite skill and experience in sufficient numbers who would be available to the owners and trainers because without such efficient jockeys the running of race meetings would not be commercially profitable. It was for this purpose that the respondent started the school for training Indian jockeys. If there were not sufficient number of efficient Indian jockeys to ride horses its interest would have suffered, and it might have had to abandon its business if it did not take steps to make jockeys of the necessary calibre available. Therefore any expenditure which was incurred for preventing the extinction

of the respondent's business would, in our opinion, be expenditure wholly and exclusively laid out for the purpose of the business of the assessee and would be an allowable deduction. This finds support from decided cases. In *Commissioner of Income-tax* v. *Chandulal Keshavlal & Co.* (1), this Court held that in order to justify a deduction the disbursement must be for reasons of commercial expediency; it may be voluntary but incurred for the assessee's business; and if the expense is incurred for the purpose of the business of the assessee it does not matter that the payment also enures to the benefit of a third party. Another test laid down was that if the transaction is properly entered into as a part of the assessee's legitimate commercial undertaking in order to facilitate the carrying on of its business it is immaterial that a third party also benefits thereby. In *British Insulated and Helsby Cables* v. *Atherton* (2), Viscount Cave L. C. held that a sum of money expended, not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the ground of commercial expediency and in order indirectly to facilitate the carrying on of the business may yet be expended wholly and exclusively for the purpose of the trade. In a case more recently decided *Morgan* v. *Tate & Lyle Ltd.* (3) the assessee company was engaged in sugar refining business and it incurred expenses in a propaganda campaign to oppose the threatened nationalisation of the industry. It was held by the House of Lords by a majority that the object of the expenditure being to preserve the assets of the company from seizure and so to enable it to carry on its business and earning profits, the expense was an admissible deduction being wholly and exclusively laid out for the purpose of the company's trade. Lord Morton of Henryton said:

"Looking simply at the words of the rule I would ask: "If money so spent is not spent for the purpose of the company's trade, for what purpose is it spent?" If the assets are seized, the company can no longer

(1) (1960) 38 I.T.R. 601, 610. (2) [1926] A.C. 205.
(3) [1955] A.C. 21.

carry on the trade which has been carried on by the use of these assets. Thus the money is spent to preserve the very existence of the company's trade".

See also *Strong & Co.* v. *Woodifield*(1), the observations of Lord Davey; and *Smith* v. *Incorporated Council of Law Reporting* (2).

Counsel for the appellant relied upon the judgment of the Privy Council in *Ward & Co. Ltd.* v. *Commissioner of Taxes* (3), but that decision proceeds on a different statute where the words were of a very restrictive character, the words being:

".....Expenditure or loss of any kind not exclusively incurred in the production of the assessable income derived from that source.....".

This case was distinguished in *Morgan* v. *Tate & Lyle*(4) on the ground that the language of the New Zealand statute was much narrower than the language of r. 3A in England.

Reference was also made by the appellant to *Boarland* v. *Kramat Pulai Ltd.* (5). In that case Directors of three Companies engaged in tin mining in Malaya incurred expenditure on printing and circulating to shareholders a pamphlet containing remarks of the Chairman of the Company. The pamphlet was an attack on the policy and acts of the Socialist Government and it was held that the question whether the money was wholly and exclusively laid out or expended for the purpose of trade within the meaning of rules applicable to the question was one of law but on a consideration of the question it was held that the expenditure was not solely incurred with that object. It is not necessary to discuss that case at any length because what was held in that case was that the pamphlet was not wholly and exclusively for the purpose of the company's trade.

Applying the law, as laid down in those cases, to the present case the conclusion is that the amount in dispute was laid out wholly and exclusively for the purpose of the respondent's business because if the

(1) [1906] A.C. 448.
(2) [1914] 3 K.B. 674.
(3) [1923)] A.C. 145.
(4) [1955] A.C. 21.
(5) [1953] 2 All E.R. 1122.

supply of jockeys of efficiency and skill failed the business of the respondent would no longer be possible. Thus the money was spent for the preservation of the respondent's business.

As to the third point there is no substance in the submission that the expenditure was in the nature of a capital expense because no asset of enduring nature was being created by this expense.

In our opinion the High Court has rightly held that the expenditure claimed was one which was wholly and exclusively laid out for the purpose of the respondent's business. It was to prevent the threatened extinction of the business of the respondent. In the result this appeal is dismissed with costs.

Appeal dismissed.