

M/S. BALLIMAL NAVAL KISHORE AND ANR.

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v.

COMMISSIONER OF INCOME TAX, BOMBAY

JANUARY 10, 1997

[B.P. JEEVAN REDDY AND K.T. THOMAS, JJ.]

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Income Tax Act, 1922: Section 10(2)(v). Income Tax—"Current repairs" or "capital expenditure"—Deduction of—Extensive repairs of cinema theatre by installing new machinery, new furniture, new sanitary fittings and new electrical wiring besides repair of structure of building—Expenditure incurred Held: capital expenditure and not current repairs—Hence, High Court rightly held expenditure not deductible—Test to determine as laid down in New Shorrock Spinning & Manufacturing Co. Ltd. Case approved—Income Tax Act, 1961, Ss. 30(a)(ii) and 31 (i)

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Words and Phrases:

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"Current repairs"—Meaning of—In the context of S.10(2)(v) of the Income Tax Act, 1922.

The appellant-assessee purchased a ginning factory and converted it into a cinema theatre and exhibited films therein. During the period 1960 to March 1961 the assessee spent a huge amount in extensively repairing the said cinema theatre by installing new machinery, new furniture, new sanitary fittings and new electrical fittings. Besides, the assessee also extensively repaired the structure of the building.

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In the assessment proceedings relating to the relevant assessment year, the assessee claimed deduction of the aforesaid amount spent on "current repairs" under Section 10(2)(v) of the Income Tax Act, 1922. The High Court decided against the appellant-assessee. Hence this appeal.

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Dismissing the appeal, this Court

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HELD: 1. The test evolved in *New Shorrock Spinning & Manufacturing Company Ltd. Case* to determine what is "current repairs" is the appropriate one. Applying that test, it would be evident that what the assessee did was not mere repairs but a total renovation of the theatre. New machinery, new furniture, new sanitary fittings and new electrical wiring

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A were installed besides extensively repairing the structure of the building. By no stretch of imagination, can it be said that the said repairs qualify as "current repairs" within the meaning of Section 10(2)(v) of the Income Tax Act, 1922. It was a case of total renovation and has rightly been held by the High Court to be capital in nature. [182-G-H]

B *New Shorrock Spinning and Manufacturing Company Ltd. v. CIT*, 30 ITR 338 (Bom.); *CIT v. Darbhanga Sugar Co. Ltd.*, (1956) 29 ITR 21 (Pat.); *CIT v. Sri Ram Sugar Mills Ltd.*, (1952) 21 ITR 191 (Mad.) and *Liberty Cinema v. CIT*, 52 ITR 153 (Cal.), approved.

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 646 of 1981.

From the Judgment and Order dated 7.2.79 of the Bombay High Court in I.T.R. No. 105 of 1970.

D Ms. A.K. Verma and S. Ganesh, Advs. for M/s. JBD & Co., for the Appellants.

Dr. R.R. Mishra, Ms. Laxmi Iyengar, B. Krishna Prasad, Advs. for the Respondent.

E The judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Section 10(2)(v) of the Income Tax Act, 1922 allows deduction of the amount spent on "current repairs" to buildings, machinery, plant, furniture employed in the business. The assessee-appellant carries on the business of exhibiting films in a theatre called "Naval Talkies" at Panipat. He had purchased the said building in 1937. It was a ginning factory then. He ran the factory till 1940. In the year 1945, he converted it into a cinema theatre and was exhibiting films therein. During the period 1960 to March 1961, the assessee extensively repaired the theatre by expending substantial amounts. The amounts spent by him are: on machinery Rs. 16,002, new furniture Rs. 27,889 sanitary fittings Rs. 5,225 and replacement of electrical wiring Rs. 13,604. In addition thereto, a total amount of Rs. 62,977 was spent on extensive repairs to walls, to the hall, to the flooring and roofing, to doors and windows and to the stage sides etc. Actually the theatre had to be closed during the aforesaid period for effecting the repairs.

In the assessment proceedings relating to the relevant assessment year, the assessee claimed deduction of the aforesaid amount of Rs. 62,977. The Income Tax Officer disallowed the same. According to him it was capital expenditure. On Appeal, Appellate Assistant Commissioner affirmed the view taken by the Income Tax Officer. On further appeal, however the Tribunal upheld the assessee's case whereupon the following question was referred to the Bombay High Court under Section 66(1) of the Indian Income Tax Act, 1922, at the instance of the Revenue: "Whether on the facts and circumstances of the case, in computing the Income of the assessee for the material year a sum of Rs. 62977 or any portion thereof is deductible?" The High Court answered the question in favour of the Revenue and against the assessee following the earlier decision of the said court in *New Shorrock Spinning and Manufacturing Company Ltd. v. Commissioner of Income Tax*, 30 I.T.R. 338.

The expression used in Section 10(2)(v) is "current repairs" and not mere "repairs". The same expression occurs in Section 30(a)(ii) and in Section 31(i) of the Income Tax Act, 1961. The question is what is the meaning of the expression in the context of Section 10(2). In *New Shorrock Spinning and Manufacturing Company Ltd.*, Chagla C.J., speaking for the Division Bench, observed that the expression "current repairs" means expenditure on buildings, machinery, plant or furniture which is not for the purpose of renewal or restoration but which is only for the purpose of preserving or maintaining an already existing asset and which does not bring a new asset into existence or does not give to the assessee a new or different advantage. The learned Chief Justice observed that they are such repairs as are attended to as and when need arises and that the question when a building, machinery etc. requires repairs and when the need arises must be decided not by any academic or theoretical test but by the test of commercial expediency. The Learned Chief Justice observed :

"The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure or 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. This can be the only definition of 'repairs' because it is only by reason of this definition of repairs that the

A expenditure is a revenue expenditure.

If the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage, then obviously such an expenditure would not be an expenditure of a revenue nature but it would be a capital expenditure, and it is clear that the deduction which, the Legislature has permitted under Section 10(2)(v) is a deduction where the expenditure is a revenue expenditure and not a capital expenditure."

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D In taking the above view, the Bombay High Court dissented from the view taken by the Allahabad High Court in *Ramkrishan Sunderlal v. Commissioner of Income Tax, U.P.* (1951) 19 I.T.R. 324 where it was held that the expression "current repairs" in Section 10(2)(v) was restricted to petty repairs only which are carried out periodically. The Learned Judge agreed with the view taken by the Patna High Court in *Commissioner of Income Tax v. Darbhanga Sugar Co. Ltd.*, [1956] 29 I.T.R. 21 and by the Madras High Court in *Commissioner of Income Tax v. Sri Rama Sugar Mills Ltd.*, [1952] 21 I.T.R. 191.

E In *Liberty Cinema v. Commissioner of Income-Tax, Calcutta*, 52 I.T.R. 153, P.B. Mukharji, J., Speaking for a Division Bench of the Calcutta High Court, held that an expenditure incurred with a view to bring into existence a new asset or an advantage of enduring nature cannot qualify for deduction under Section 10(2)(v).

F In our opinion the test evolved by Chagla C.J. in *New Shorrock Spinning & Manufacturing Company Limited* is the most appropriate one having regard to the context in which the said expression occurs. It has also been followed by a majority of the High Courts in India. We respectfully accept and adopt the test.

G Applying the aforesaid test, if we look at the facts of this case, it will be evident that what the assessee did was not mere repairs but a total renovation of the theatre. New machinery, new furniture, new sanitary fittings and new electrical wiring were installed besides extensively repairing the structure of the building. By no stretch of imagination, can it be said that the said repairs qualify as "current repairs" within the meaning of Section 10(2)(v). It was a case of total renovation and has rightly been held
H by the High Court to be capital in nature. Indeed, the finding of the High

Court is that as against the sum of Rs. 17,000 for which the assessee had A purchased the factory in 1937, the expenditure incurred in the relevant accounting year was in the region of Rs. 1,20,000.

The appeal accordingly fails and is dismissed. No Costs.

V.S.S.

Appeal dismissed.