

PETITIONER:
BROOKE BOND INDIA LIMITED

Vs.

RESPONDENT:
COMMISSIONER OF INCOME TAX, WEST BENGAL-III, CALCUTTA

DATE OF JUDGMENT: 27/02/1997

BENCH:
S.C. AGRAWAL, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

In this appeal, by certificate granted by the High Court under Section 261 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the following question referred to the Calcutta High Court by the Income Tax Tribunal (hereinafter referred to as 'the Tribunal') was answered in favour of the Revenue and against the assessee:-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in sustaining the disallowance of Rs. 13,99,305/- being expenses incurred in connection with the issue of fresh lot of shares in 1967?"

The question relates to the assessment year 1969-70 and the relevant account year ended on June 30, 1968. The assessee is a public limited company. It issued ordinary shares of Rs 16,75,000/- of Rs 10/- each at a premium with a view to increase its share capital and, in that connection, it incurred an expenditure of Rs. 13,99,305/- which amount was claimed by it as deductible expenses. The said deduction was disallowed by the Income Tax Officer on the view that the expenditure incurred by the assessee was on the capital account. The said view of the Income Tax Officer was affirmed by the Appellate Assistant Commissioner and the Tribunal. The High Court, while upholding the view of the Tribunal, has held that the expenditure and would fall under capital expenditure. The High Court has placed reliance on the observations of this Court in *India Cements Ltd. v. Commissioner of Income Tax, Madras*, 60 ITR 52, and it did not agree with the view taken by the Madras High Court Commissioner of Income Tax, Tamil Nadu-I v. *Kisenchand Chellaram (India) P. Ltd.*, 130 ITR 385.

Dr. Debi Pal, the learned senior counsel appearing for the appellant-assessee, has submitted that the High Court was in error in holding that the expenses incurred by the assessee in issuing the shares with a view to increase its capital did not constitute revenue expenditure. According to the learned counsel, the said view of the High Court is not in consonance with the law laid by the this Court in *Empire*

Jute Company Ltd. v. Commissioner of Income Tax, 124 ITR 1; Commissioner of Income Tax. Bombay-II v. Associated Cements Co. Ltd., 172 ITR 257 and Alembic Chemical works Co. Ltd. v. Commissioner of Income Tax. Gujarat, 177 ITR 377. The learned counsel has also invited our attention to the decisions of the High Courts of Andhra Pradesh, Kerala and Madras High Court in Kisenchand Chellaram (India) P. Ltd. (supra). [See: Warner Hindustan Ltd. v. Commissioner of Income Tax (A.P.), 171 ITR 224; Hindustan Machine Tools Ltd. (No. 3) v. Commissioner of Income Tax, Karnataka-II, 175 ITR 220 and Federal Bank Ltd. v. Commissioner of Income Tax, Kerala. 180 ITR 241].

We find that this matter has come up for consideration before this Court in m/s Punjab State Industrial Development Corporation Ltd., Chandigarh v. Commissioner of Income Tax. Patiala. (Tax Reference No. 1 of 1990 decided on December 4, 1996). In that case, the question under consideration was whether an amount of Rs. 1,50,000/- paid to the Registrar of Companies as filing fee for enhancement of capital was not revenue expenditure. The Court has taken note of the decisions of the Madras, Andhra Pradesh, Karnataka and Kerala High Courts to which reference has been made by Dr. Pal as well as the judgment under challenge in this appeal and the judgment under challenge in this appeal and the judgment of the High Courts taking the same views that taken in the impugned judgment. This Court has also taken note of the decisions in Empire Jute Company Ltd. (supra) as well as India Cements Ltd. (supra). While holding that the amount of Rs. 1,50,000/- paid to the Registrar of Companies as filing fee for enhancement of the capital was not revenue expenditure, this Court has said:-

"We do not consider it necessary to examine all the decisions in extenso because we are of the opinion that fee paid to the Registrar for expansion of the capital base of the company was directly related to the capital incidentally that would certainly help in the business of the company and may also help in profit making, it still retains the character of a capital expenditure since the expenditure was directly related to the expansion of the capital base of the company. we are, therefore, of the opinion that the view taken by the different High Courts in favour of the Revenue in this behalf is the preferable view as compared to the view based on the decision of the Madras High Court in Kisenchand Chellaram's case."

This decision thus covers the question that falls for consideration in this appeal.

Dr. pal has, however, submitted that this decision does not cover a case. like the present case, where the object of enhancement of the capital was to have more working funds for the assessee to carry on its business and to earn more profit and that in such a case the expenditure that is incurred in connection with issuing of shares to increase the capital has to be treated as revenue expenditure. In this connection, Dr. pal has invited our attention to the submissions that were urged by the learned counsel for the assessee before the Appellate Assistant Commissioner as well

as before the Tribunal it was submitted on behalf of the assessee that increase in the capital was to meet the need for working funds for us the assessee-company. But the statement of case sent by the Tribunal does not indicate that a finding was recorded to the effect that the expansion of the capital was undertaken by the assessee in order to meet the need for more working funds for the assessee. We, therefore, cannot proceed on the basis that the expansion of the capital was undertaken by the assessee for the purpose of meeting the need for working funds for the assessee to carry on its business, In any event, the abovequoted observations of this Court in m/s Punjab State Industrial Development Corporation Ltd. Chandigarh (supra) clearly indicate that though the increase in the capital results in expansion of the capital base of the company and incidentally that would help in the business of the company and incidentally that would help in the business of the company and may also help in the profit making, the expenses incurred in that connection still retain the character of a capital expenditure since the expenditure is directly related to the expansion of the capital base of the company.

In these circumstances, we do not find any merit in the appeal and it is accordingly dismissed. No order as to costs.