

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2315/2007

DY. COMMISSIONER OF INCOME TAX

Appellant(s)

VERSUS

M/S. RAGHUVIR SYNTHETICS LTD., AHMEDABAD

Respondent(s)

J U D G M E N T

R.K. AGRAWAL, J.

1. The present appeal arises out of the judgment and order dated 14.06.2005 passed by the High Court of Gujarat at Ahmedabad in Tax Appeal No.333/2004.

2. The respondent-assessee is a public limited company and for the assessment year 1994-95, it had filed its return wherein it had claimed revenue expenditure of Rs.65,47,448/- on advertisement and public issue. However, in the Return of Income, the Company made a claim that if the aforesaid claim cannot be considered as a revenue expenditure then alternatively then the said expenditure may be allowed under Section 35D of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by way of capitalizing in the plant and machinery obtained.

3. The Assessing Officer issued an intimation under Section 143(1) (a) of the Act on 23.02.1995 disallowing a sum of Rs.58,92,700/- out of the preliminary expenditure incurred on public issue. He, however, allowed 1/10th of the total expenses and raised demand on the balance amount.

4. The intimation was challenged before the First

Appellate Authority which vide order dated 01.10.1996, allowed the appeal by holding that the concept of 'prima facie adjustment' under Section 143(1) (a) of the Act cannot be invoked as there could be more than one opinion on whether public issue expenses were covered by Section 35D or Section 37 of the Act.

5. Feeling aggrieved by the order passed by the First Appellate Authority, the Revenue preferred an appeal before the Income Tax Appellate Tribunal. The Tribunal vide order dated 04.09.2003 upheld the order of the Income Tax Commissioner (Appeals) and dismissed the Appeal filed by the Revenue.

6. The appellant preferred an appeal under Section 260-A of the Act before the High Court of Gujarat at Ahmedabad. The Division Bench of the High Court by the impugned order dismissed the appeal on the ground that a debatable issue cannot be disallowed while processing return of income under Section 143(1) (a) of the Act.

7. We have heard Mr. K. Radhakrishnan, learned Senior Counsel appearing for the appellant. Nobody has put in appearance on behalf of the respondent.

8. Mr. K. Radhakrishnan, learned Senior Counsel relied upon the decisions of this Court in *Brooke Bond India Ltd. v. Commissioner of Income Tax, W.B.III, Calcutta - (1997) 10 SCC 362* and *Punjab State Industrial Development Corporation Ltd., Chandigarh v. Commissioner of Income Tax, Patiala - 1997 (10) SCC 184* to contend that the preliminary

expenses incurred for public issue or for raising additional capital is only capital expenditure and not a revenue expense and, therefore, the law being settled by this Court, it would relate back and would be held to be operative from the very inception.

9. We find that there was a divergence of opinion between the various High Courts; one view being taken by the Madras High Court in *CIT v. Kisenchand Chellaram (India) (P) Ltd.* - (1981) 130 ITR 385 (Mad), Andhra Pradesh High Court in *Warner Hindustan Ltd. v. CIT* - (1988) 171 ITR 224, Kerala High Court in *Federal Bank Ltd. v. CIT* - (1989) 180 ITR 241 (Ker) and Karnataka High Court in *Hindustan Machine Tools Ltd. (No.3) v. CIT* - (1989) 175 ITR 220 that the preliminary expenses incurred on raising a share capital is a revenue expenditure.

10. On the other hand, a contrary view was expressed by the Allahabad High Court in *CIT v. Modi Spg. & Wvg. Mills Co. Ltd.* - (1973) 89 ITR 304 (All), Himachal Pradesh High Court in *Mohan Meakin Breweries Ltd. v. CIT* - (1979) 117 ITR 505 (HP), Delhi High Court in *Bharat Carbon and Ribbon Mfg. Co. Ltd. v. CIT* - (1981) 127 ITR 239 (Del), Calcutta High Court in *Brook Bond India Ltd. v. CIT* - (1983) 140 ITR 272 and *Kesoram Industries & Cotton Mills Ltd.* - (1992) 196 ITR 845, Bombay High Court in *Bombay Burmah Trading Corpn. Ltd. v. CIT* - (1984) 145 ITR 793, Punjab & Haryana High Court in *Groz Beckert Saboo Ltd. v. CIT* - (1986) 160 ITR 743 (P&H), Gujarat High Court in *Ahmedabad Mfg. & Calico*

(P) Ltd. v. CIT - (1986) 162 ITR 800 (Guj) and Alembic Glass Industries Ltd. v. CIT - (1993) 202 ITR 214 (Guj), Andhra Pradesh High Court in Vazir Sultan Tobacco c. Ltd. v. CIT - (1988) 174 ITR 689 (AP) and Rajasthan High Court in CIT v. Aditya Mills - (1990) 181 ITR 195 (Raj) and CIT v. Multi Metals Ltd. - (1991) 188 ITR 151 (Raj), that the said expenses are capital expenditure and cannot be allowed as revenue expenditure.

11. Even though it is a debatable issue but as Gujarat High Court in the case of Ahmedabad Mfg. & Calico (P) Ltd. (supra) had taken a view that it is capital expenditure which was subsequently followed by Alembic Glass Industries Ltd. V. CIT (supra) and the registered office of the respondent assessee being in the State of Gujarat, the law laid down by the Gujarat High Court was binding. (See Taylor Instrument Com.(India) Ltd. v. Commissioner of Income Tax - (1998) 232 ITR 771, Commissioner of Gift Tax v. J.K. Jain - (1998) 230 ITR 839, Commissioner of Income Tax v. Sunil Kumar - (1995) 212 ITR 238, Commissioner of Income Tax v. Thana Electricity Supply Ltd. - (1994) 206 ITR 727, Indian Tube Company Ltd. v. Commissioner of Income Tax & Ors. - (1993) 203 ITR 54, Commissioner of Income Tax v. P.C. Joshi & B.C. Joshi - (1993) 202 ITR 1017 and Commissioner of Income Tax, West Bengal, Calcutta v. Raja Benoy Kumar Sahas Roy - (1957) 32 ITR 466). Therefore, so far as the present case is concerned, it cannot be said that the issue was a debatable one.

12. In view of the above submissions, in our considered view the order passed by the CIT (Appeals), the Income Tax Appellate Tribunal and also the order of the Gujarat High Court impugned herein cannot sustain and are set aside as they have wrongly held that the issue was debatable and could not be considered in the proceedings under section 143 (1) of the Act.

13. With the aforesaid observations, the Appeal succeeds and the same is allowed. The impugned order dated 14.06 2005 passed by the High Court is set aside.

.....J.
[R.K. AGRAWAL]

.....J.
[MOHAN M. SHANTANAGOUDAR]

NEW DELHI;
MARCH 28, 2017.

ITEM NO.105

COURT NO.10

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2315/2007

DY. COMMISSIONER OF INCOME TAX

Appellant(s)

VERSUS

M/S. RAGHUVIR SYNTHETICS LTD., AHMEDABAD
(With office report)

Respondent(s)

Date : 28/03/2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.K. AGRAWAL

HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

For Appellant(s) Mr. K.Radhakrishnan, Sr. Adv.
Ms. Niranjana Singh, Adv.
Ms. Gargi Khanna, Adv.
Mr. Ram Bhaj, Adv.
For Mrs. Anil Katiyar, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E RThe appeal is allowed in terms of the signed
reportable judgment.(ASHA SUNDRIYAL)
COURT MASTER(CHANDER BALA)
COURT MASTER

(Signed reportable judgment is placed on the file.)