

IN THE HIGH COURT OF BOMBAY

Income Tax Appeal No. 1321 OF 2010

COMMISSIONER OF INCOME TAX-2, MUMBAI

Vs

TATA SSL LTD

J P Devadhar and Smt R P Sondurbaldota, JJ

Dated: June 08, 2011

JUDGEMENT

Per: J P Devadhar:

1. The question of law raised in this appeal by the revenue reads thus: -

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing the claim of the assessee company of Rs.45,21,000/- as revenue expenditure being one time payment made to Mahanagar Gas Ltd. by the assessee company towards CNG connection charges even though such payment was made as capital contribution towards cost of service metre, twin steam engine regulator, meter regulating station and cost of pipelines up to meter regulating stations and was a payment made before commencement of gas supply"

2. The assessee, a public limited company engaged in the business of manufacturing steel wire rods, wires, CR sheets and profiles, had paid Rs.45,21,000/- to Mahanagar Gas Ltd. towards CNG connection in the assessment year 2002-03. The said expenditure was claimed as revenue expenditure. The assessing officer disallowed the claim on the ground that the payment was made as capital contribution towards the cost of acquiring service metre, twin steam regulator, meter regulating station and cost of pipelines up to meter regulating station and that the payment was made before the commencement of gas supply and, therefore, the expenditure being capital in nature cannot be allowed as revenue expenditure.

3. The CIT(A), however, allowed the assessee's appeal on the ground that the expenditure was incurred as an integral part of the profit earning process and not for acquisition of an asset of a permanent character.

4. The Tribunal while affirming the order of CIT (A) held that by paying the impugned charges to Mahanagar Gas Ltd., the assessee did not acquire any right or control over the gas facility. The Tribunal held that the facilities served the sole purpose of supplying the gas to the assessee's work and, therefore, it was an integral part of the profit earning process and facilitated in carrying on the assessee's business more efficiently without giving any enduring benefit to the assessee. The Tribunal relied upon the judgments of the Apex Court in the case of *Empire Jute Co. Ltd. V/s. CIT reported in [1980] 3 Taxman 69 (SC)*, *L.H. Sugar Factory and Oil Mills (P) Ltd. V/s. C.I.T., U.P. reported in [1980] 125 I.T.R.293 (S.C.)* and the decision of this Court in

the case of *CIT V/s. Excel Industries Ltd.* reported in [1980] 122 I.T.R. 995 (Bom), which is also affirmed by the Apex Court.

5. It is contended by the counsel for the revenue that the payments made by the assessee to Mahanagar Gas Ltd. were in respect of assets which were intended to give enduring benefit to the assessee. As held by the Apex Court in the case of *Empire Jute Co.* (supra) expenditure even if incurred for obtaining an advantage of enduring benefit may be on revenue account. In the case of *Excel Industries Ltd.* (supra) this Court has held that payments made by an assessee to the Electricity Board to get electricity by providing an overhead service line would be revenue expenditure. In the present case, the finding recorded by the Tribunal is that the assets remained the property of Mahanagar Gas Ltd. and that the sole object of payment was to get gas to facilitate the manufacturing activity carried on by the assessee. In these circumstances, in our opinion, no fault can be found with the decision of the Tribunal.

6. Accordingly, we find no merit in the appeal and the same is hereby dismissed with no order as to costs.