

CASE COMMENT: ADITYA MINERALS V. COMMISSIONER OF INCOME TAX¹

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Introduction

Section 37(1) of the Income Tax Act, 1961 says that any expenditure (not being of that nature as mentioned in sections 30 to 36 and not capital expenditure or personal expenses of assessee), laid out or expended wholly or exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head “Profits and gains of business or profession.” According to the explanation pertaining to this section any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

Section 37 (1) is a residuary section. In order to claim deduction under this section the following condition must be satisfied:

1. The expenditure should not be of nature as described under sections 30 to 36.
2. It should be not in nature of capital expenditure.
3. It should not be the personal expenditure of the assessee.
4. It should have been incurred in the previous year.
5. It should be in respect of business carried on by the assessee.
6. It should have been expended wholly and exclusively for the purposes of such business.
7. It should not be incurred for the purpose which is an offence or is prohibited by any law.

Capital Expenditure and Revenue Expenditure

The income tax act, 1961 has not defined the expression “Capital Expenditure” and “Revenue Expenditure”. For computing the taxable income of the assessee the revenue expenditure is

¹ (1999) 8 SCC 97

deducted therefrom and not the capital expenditure. Therefore, understanding the two is of utmost importance.

We use various items every day like pencil, furniture, cosmetics, utensil, sofa, dining table, food etc. Every product has its own essence some are consumable and other are durable. The benefit derived from expenditure on pencil, cosmetics, pencil etc. is short term as they are consumables but benefit derived from the products like utensils, sofa, dining table etc. is long term as they are durable, they provide benefits over the years.

Likewise happens in business. In business expenditure can be classified in two types. Firstly, routine expenditure on postage, repairs, salaries, stationary etc. which provide short term benefit and secondly expenditure on fix assets like building, manufacturing plants, furniture, machinery etc. Which provide benefit over the years. In terminology of economics first is called revenue expenditure and second is called capital expenditure.

Capital Expenditure

As discussed above, when benefit from expenditure is not exhausted in the year in which it is purchased and provide benefits over years is called capital expenditure. Following expenditure is generally classified as capital expenditure.

- 1) Any expenditure or purchase which result in the gain of fixed assets such as plot, manufacturing plant, machines, building, office, copyrights etc. Now it is pertinent to mention that capital expenditure does not only include price used in purchasing of fixed asset but also includes various accessory expenses in connection with fixed asset. So, expenses like transportation of machinery, expenses of installation, if there is purchase of land or building then legal fees for its registration is also called capital expenditure.
- 2) Any expenditure on fixed asset which result in expansion of asset, substantial increase in life span and increase in revenue earning capacity. Revenue earning capacity can be increased by first increase in production capacity, second reduce cost of production and third increase in firms. Thus, the cost which makes addition to the building and spend on the renovation of old machinery is also capital expenditure. Sometimes second-hand machine is purchased and then amount is spend on reconditioning it this expenditure is also capital expenditure. Any expenditure for structural improvements or improvement or alteration in existing fixed assets

to increase revenue earning capacity is capital expenditure.

- 3) Any expenditure during the early years, for development of land and mills till they become functional.
- 4) Cost of experiments which provide acquisition of patent. But if experiment is unsuccessful then will not be included which give up in two to three years.
- 5) Any legal cost or fees incurred in relation to acquiring or defending suits for protecting assets, right in relation of assets and other expenditure which is lawfully necessary.

Revenue Expenditure

When benefit from the expenditure is for current period and is not likely to more than a year is called revenue expenditure. In simple words it can be said that the expenses which are experienced in the routine course of business is called revenue expenditure. Following expenditure is generally classified as revenue expenditure.

- 1) Expenses experienced in day-to-day routine course of business-like rent, stationery, electricity, insurance, postage, rent, wages etc.
- 2) Expenditure experienced from buying goods for using as raw material in plant or for the resale.
- 3) Expenses experienced for sustaining and preserving the fixed assets like machines, equipment, building, plant and cost of repair is also included.
- 4) Reduction in fixed assets. This also come under head of revenue loss.
- 5) Any interest from the loan borrowed for running the business. Now it is important here to mention that any interest paid on load during the early period before production starts do not comes under revenue expenditure and is treated as capital expenditure.
- 6) Any legal fees or expenses experienced in the daily or ordinary course of business-like legal fees experienced on collection from debtors, legal expenses experienced on alleging or defending a suit etc.

Difference between Capital Expenditure and Revenue Expenditure

Basis of difference	Capital Expenditure	Revenue Expenditure
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Definition	Expenditure experienced for gaining new asset or any expenditure for enhancing the capacity of asset.	The expenses experienced for conducting day to day course of business.
Tenure	Capital Expenditure is for long term benefit.	Revenue Expenditure is for short term benefit.
Benefit	Benefit of expenditure are for number of years.	Benefit of expenditure are typically for the current year or within one year.
Value Addition	Capital expenditure enhance the value of existing asset.	Revenue expenditure do not enhance the value of existing asset.
Impact on revenue	Capital expenditure do not reduce business revenue.	Revenue expenditure reduce business revenue.
Physical appearance	Capital expenditure have physical presence generally.	Revenue expenditure do not have physical presence.

Case Comment on Aditya Mineral (P) Ltd v. Commissioner of Income Tax

Now to provide more clarity regarding this concept it is pertinent to discuss the case Aditya Mineral (P) Ltd v. Commissioner of Income Tax².

Nature & Methodology of the Case

This case is descriptive analytical in approach and has been done taking the help of secondary data i.e., websites, articles, journals, books, etc. To construct this case comment, the help of dictionaries, websites as well as foreign journals and books on the said case has been taken. The points as discussed in this case belong to different sources on the topic as well as the points guided by the faculty. Footnotes have also been provided for acknowledging the sources as and where needed.

² (1999) 8 SCC 97

Facts of the case

The appellant assessee obtained a lease dated 8-3-1972 from Aditya Minerals Private Limited. It was a term of the lease deed that the lessor will grant lease for the period of 15 years from December 1st of the year one thousand nine hundred and seventy-one at a monthly rent of Rs 35 (Rupees thirty-five) only per acre. The lease deed also mention that the lessee shall deposit with the lessor by way of the guarantee for due performance of this lease deed for fifteen years, the amount equal to the rent of lease of land for the full period of lease which will be adjustable against rent of every month. This entire guarantee deposit shall not carry any interest. The lease deed granted to the assessee the liberty to use the land for excavation purposes and subsidiary purposes.

Contention by Appellant

The assessee raise contention that rent amount that is Rs 10,752 per annum be treated as revenue expenditure for the assessment year.

Contention by Respondent

The sum of Rs 10,752 per annum be treated as capital expenditure for the assessment year and do not fulfil condition for deduction under Section 37 (1) of Income Tax Act, 1961.

Issue in case

The question which needs to be determined is that whether on the facts and in the circumstances of the case, the sum of Rs 10,752 paid by the assessee in the accounting year was not expenditure allowable as a deduction under Section 37 (1) of Income Tax Act, 1961?

Analysis of cases

To answer this question Supreme Court have applied various tests in this regard:

- 1) Test of enduring benefit: When an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or advantage for enduring benefit of a trade, there is very good reason (in the absence of special circumstances leading to the opposite conclusion), for treating such expenditure as properly attributable not to revenue but to capital.
- 2) Test of fixed or circulating capital: Expenditure which acquires a capital asset is capital expenditure, if it acquires stock-in-trade, then it is revenue expenditure. Fixed capital is what

the owner turns to profit by keeping it in his own possession, circulating capital (stock-in-trade) is what he makes profit by parting with it and letting it change masters.

Appellant for support of his case referred to the Gotam Line Syndicate³ but apex court struck down his content by stating that in the given case there is no payment once and all for the lease but is a yearly payment of dead-rent and royalty. It is true that if a capital sum is arrived at and payment is made every year by chalking out the capital amount in various instalments, the payment does not lose its character as a capital payment if the sum determined was capital in nature. But it is an important fact in this case that it is a case of an annual payment of royalty or dead-rent. The royalty paid by the assessee was allowed as a revenue expenditure as it had relation to the raw materials to be excavated and extracted.

Respondent for the support of his case referred to the Pingle Industries Ltd⁴ where payment was in one go and the same was used for the acquiring the capital asset.

In order to reach the conclusion of this case court referred both the cases that are Pingle Industries Ltd⁵ and Gotan Lime Syndicate⁶ and held that the case of *Pingle Industries Ltd.* was “distinguishable because on the facts it was a lump sum payment in instalments for acquiring a capital asset of enduring benefit to his trade”. The Court in *Gotan Lime Syndicate* took the view that the royalty payment therein was “not a direct payment for securing an enduring advantage; it has relation to the raw material to be obtained”.

Observation

Hence the court relied on Pingle Industries Ltd and held that payment was made in one go and was to be used for acquiring capital asset of enduring benefit to his trade. Therefore, shall be treated as capital expenditure and not revenue expenditure. The civil appeal must fail and is dismissed.

³ (1966) 59 ITR 718 : AIR 1966 SC 1564

⁴ (1960) 40 ITR 67 : AIR 1960 SC 1034

⁵ (1960) 40 ITR 67 : AIR 1960 SC 1034

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