

1955
STATE
v.
YEMANAPPA
LIMBAJI
Vyas J.

"On examining the person of S. M. Salvi, P. S. I., we saw a scratch of one inch in length on the left cheek which has got a curve. The skin on it has come out. The inner flesh looks red. He has worn uniform of bush shirt and the first upper button has recently come out."

The very fact that the skin of the Sub-Inspector's cheek had come off and the flesh below the cheek had appeared red would show that the Sub-Inspector is stating the truth when he deposes that he was assaulted by the accused and hurt was caused to him by the accused. On merits, therefore, we endorse the conclusion arrived at by the Courts below.

In the result, therefore, the appeal filed by the State of Bombay must succeed. The order of acquittal passed in favour of the respondent by the learned Additional Sessions Judge, Sholapur, is set aside and the order of the learned trial Magistrate is restored. In other words, the accused is convicted of an offence under s. 332 of the Indian Penal Code. He is sentenced to pay a fine of Rs. 25; in default of payment of fine, he is sentenced to suffer fifteen days' rigorous imprisonment.

Order of acquittal set aside.

K. B. S.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

1956
Feb. 27

THE NEW SHORROCK SPINNING AND MANUFACTURING CO., LTD.
APPLICANTS *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY
NORTH, KUTCH AND SAURASHTRA, AHMEDABAD, RESPONDENT.*

Indian Income-Tax Act (XI of 1922), s. 10 (2) (v)—Expenditure incurred for replacing certain looms in Mills—Such expenditure incurred after sixty years—Whether such expenditure permissible expenditure under s. 10 (2) (v)?—"Current repairs", meaning of.

The expression "current repairs" in s. 10 (2) (v) of the Indian Income-Tax Act, 1922 means such repairs as are attended to as and when the need for them arises and which are not allowed to fall into arrears or be accumulated. The question as to when a building, machinery, plant or furniture requires repairs or when the need for repairs arises is to be decided not by any academic or theoretic test but by the test of commercial expediency.

The allowance for current repairs under s. 10 (2) (v) of the Act refers to expenditure on buildings, machinery, plant and furniture which is incurred not for the purpose of renewal or restoration but for the purposes of preserving or maintaining an already existing asset; an expenditure which is incurred for bringing a new asset into existence or for giving to the assessee a new or different advantage is not a permissible deduction under that section.

Lurcott v. Wakely and Wheeler,⁽¹⁾ referred to.

Commissioner of Income-Tax v. Darbhanga Sugar Co., Ltd.,⁽²⁾ and

*Income-Tax Reference No. 38 of 1955.

1. [1911] 1 K. B. 905.

2. [1956] 29 I. T. R. 21.

Commissioner of Income-tax v. Sri Ram Sugar Mills,⁽³⁾ agreed with.

Ramkrishna Sunderlal v. Commissioner of Income-tax, U. P.,⁽⁴⁾ dissented from.

In view of the very strict limitations placed by the Legislature upon a deduction falling under s. 10 (2) (xv) of the Act, it is necessary and desirable that a liberal interpretation should be put upon the right of the assessee to claim deductions under sub-clauses (i) to (xiv) of s. 10 (2) of the Act.

It is a well-established canon of construction of all taxing statutes that if a reasonable interpretation of the language used by the Legislature leads to a less heavy charge being made against the assessee it is to be preferred.

The assessee Mills spent a sum of Rs. 30,557 for replacing certain completely worn-out parts of some of the looms. As the old parts were not available in the market and could only be prepared at a disproportionately heavy cost, they were replaced by parts of a new and better type. These looms had been worked with the old parts for sixty years and the need for repairs arose for the first time after sixty years. The Income-Tax Appellate Tribunal negatived the assessee's contention that the sum of Rs. 30,557 was an expenditure for current repairs and as such could be claimed as a deduction under s. 16 (2) (v) of the Act. On reference,

Held, that as the expenditure was incurred for preserving and maintaining an asset it was expenditure for current repairs and was a permissible deduction under s. 10 (2) (v) of the Act.

Facts material to the report are fully set out in the judgment.

At the instance of the assessee the Income-tax Appellate Tribunal referred the following questions to the High Court at Bombay:—

(1) Whether on the facts and in the circumstances of the case, the sum of Rs. 30,557 is rightly claimable as a deduction allowable under s. 10 (2) (v) of the Indian Income-Tax Act?

(2) If not, whether on the facts and in the circumstances of the case, the expenditure of Rs. 30,557 was an allowable deduction under s. 10 (2) (xv) of the Indian Income-tax Act?

N. A. Palkhivala for the Applicants.

M. P. Amin, Advocate General with *G. N. Joshi* for the Respondent.

Chagla C. J.—The facts which give rise to this reference are few but they raise a rather interesting question. In the calendar year 1951, which is the previous year of the assessee company which is a textile Mill, the assessee company spent a sum of Rs. 30,557 at Rs. 47 per piece for replacing certain parts in 646 looms out of 864 looms which these Mills possessed. This particular part that was replaced was a device which helped in keeping a certain tension for the working of the looms. The old parts which were replaced had become completely worn out, they were heavy in weight and were also of a construction which made them not easily workable. Further, these old parts were not available in the market and if an attempt

1956

NEW
SHORROCK
SPG. & MFG
CO., LTD
v.
COMMISSIONER OF
INCOME-TAX,
BOMBAY

Chagla C. J.

1956

NEW
SHORROCK
SPG. & MFG.
CO., LTD.
v.
COMMISS-
SIONER OF
INCOME-TAX,
BOMBAY
Chagla C. J.

had been made to prepare parts similar in kind or to acquire them, the cost would have been disproportionately high. The assessee company therefore replaced these parts with the parts of a new type which were lighter in weight, could be lifted with the toe of the foot, conformed to the international labour standard and were superior to the old parts. It also appears that the looms could be worked and in fact had been worked with these old parts for a period of 60 years and no need had arisen during all these years for replacing the old parts. The assessee company claimed deduction for the amounts spent, viz. Rs. 30,557, as a permissible deduction and this deduction was disallowed and the Tribunal upheld the view of the Department in upholding the disallowance, and the question that has been submitted to us is whether this is an allowable deduction under s. 10 (2) (v) and if not whether it was an allowable deduction under s. 10 (2) (xv).

Section 10 (2) (v) permits a deduction in respect of current repairs to such buildings, machinery, plant or furniture, the amount paid on account thereof. Now, "such" must be read with reference to the earlier clause which is cl. (iv) and which refers to "insurance against risk of damage or destruction of buildings, machinery, plant, furniture, stocks or stores, used for the purposes of the business, profession or vocation, the amount of any premium paid". Therefore it is only in respect of buildings etc. used for the purposes of the business, profession or vocation of the assessee that the current repairs could be claimed. There is no doubt that this particular machinery or plant is used for the purposes of the business of the assessee. The question that we have to consider is whether the deduction constitutes current repairs. It will be noticed that the Legislature has not permitted all repairs to constitute a permissible deduction. Not only has the assessee to satisfy the Department that the expenditure that he made was for the purpose of repairs to his buildings, machinery, plant or furniture, but also that those repairs were current repairs, and what we have to consider is what is the connotation to be given to the expression "repairs" and what is the connotation to be given to the expression "current".

The expression "repairs" must be understood in contradistinction to renewal or restoration. A building, machinery, plant or furniture may be renewed or restored either wholly or in part, in which case the amount expended would not be in respect of repairs, but when renewing or restoring a building, machinery plant or furniture a need may arise to set right certain defects or flaws and an amount may be spent for this purpose and the result may be that although the original asset has been preserved and maintained, no new asset has come into existence and

no additional advantage has accrued to the assessee. The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure for 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 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 s. 10 (2) (v) is a deduction where the expenditure is a revenue expenditure and not a capital expenditure. Therefore in giving the meaning which we are giving to the expression "repair" we are only paraphrasing the expression that the expenditure under cl. (v) of s. 10 (2) must be an expenditure of a revenue nature and not of a capital nature.

The definition of "repair" really does not create much difficulty, but the difficulty is created by the adjective which qualifies the expression "repairs" and that adjective is "current", and as already pointed out the Legislature did not intend that the assessee should be permitted all repairs, even though the expenditure may be a revenue expenditure, as a permissible deduction under s. 10 (2) (v). What we have to consider is in what way has the Legislature circumscribed the expression "repairs" and to what extent has the Legislature limited the right of the assessee to claim deduction in respect of repairs. One or two views are possible of the expression "current". It may be said that "current" is used in contradistinction to heavy and that small petty repairs are the only repairs which can fall within the ambit of s. 10 (2) (v). The other view is a view more in fitting with the etymological meaning of the expression "current", and it is that they are such repairs which are attended to when the need for them arises and are not allowed to fall into arrears or to be accumulated. If a building, machinery, plant or furniture needs some repairs and those repairs are attended to as and when the need arises, then the repairs are current repairs. But if the assessee, although the need has arisen, does not attend to that need and allows the repairs to get accumulated, then it could not be said that when he is expending money on these repairs he is expending them on current repairs. Again, it seems to have been the intention of the Legislature that if the assessee could carry on with his building, machinery, plant or furniture without attending to

1956

NEW
SHORROCK
SPG. & MFG.
CO., LTD.
v.
COMMISSIONER OF
INCOME-TAX,
BOMBAY

Chagla C. J.

1956

NEW
SHORROCK
SPG. & MFG.
CO., LTD.

v.

COMMISS-
SIONER OF
INCOME-TAX,
BOMBAY

Chagla C. J.

its repairs and spends an amount at a later date when the arrears are accumulated, such expenditure partakes more of the nature of capital expenditure than of revenue expenditure. .

In our opinion, the latter view as to the expression "Current Repairs" is the better view and more consistent with the language used by the Legislature. It may also be pointed out that since 1953 when s. 10 (2) (xv) was amended, no deduction is permissible under s. 10 (2) (xv) which is an allowance of the nature described in any of the cls. (i) to (xiv). We are not going to decide the question as to whether this case falls under s. 10 (2) (xv) or not, but as a general matter of construction we may say that in view of the very strict limitations placed by the Legislature upon a deduction falling under s. 10 (2) (xv) it is necessary and desirable that as liberal an interpretation should be put upon the right of the assessee to claim deductions under s. 10 (2) (i) to s. 10 (2) (xiv). In two unreported cases References Nos. 17 of 1950 and 36 of 1950, we refused to decide the question whether the particular expenditure claimed there as an expenditure for current repairs fell under s. 10 (2) (v) because we took the view that as the case in any event fell under s. 10 (2) (xv) it was unnecessary to decide the other question. It may be that now the position has changed in view of the amendment introduced by the Legislature and therefore it may not be possible for the Court to say that no prejudice is caused to the assessee if expenditure for repairs is not allowed because he could claim the same deduction under s. 10 (2) (xv). Therefore, according to the well established canon of construction of all taxing statutes, the charge should be made less heavy against the assessee if a reasonable interpretation of the language used by the Legislature leads to that conclusion. In our opinion, therefore, the expression "current repairs" used in s. 10 (2) (xv) means expenditure on buildings, machinery, plant or furniture which is not for the purpose of renewal or restoration, which is only for the purpose of preserving or maintaining an already existing asset, which does not bring a new asset into existence or does not give to the assessee a new or different advantage, and they must be repairs which are attended to as and when the need for them arises. We should also like to make it clear that the question as to when a building, machinery, plant or furniture requires repairs and when the need arises must be decided by not any academic or theoretical test but must be decided by the test of commercial expediency. It is after all for a businessman primarily to decide when his building, machinery, plant or furniture requires repairs. It is by that test alone that the question must be decided as to whether the repairs are current repairs or repairs which have fallen into arrears or have been

accumulated over a period of time and then expenditure has been incurred in carrying out those repairs.

Turning to the authorities, in the first place we might look at the well known definition of Lord Justice Buckley, which is always quoted whenever a case of repairs comes up before a Court, and those observations were made in the case of *Lurcott v. Wakely & Wheeler*,⁽⁵⁾ and there Lord Justice Buckley draws a distinction between repair and renewal and this is what the learned Lord Justice says:

“Repair and renew are not words expressive of a clear contrast. Repair always involves renewal; renewal of a part; of a subordinate part..... Repair is restoration by renewal or replacement of subsidiary parts of a whole. Renewal, as distinguished from repair, is reconstruction of the entirety, meaning by the entirety not necessarily the whole but substantially the whole subject-matter under discussion.”

The question of current repairs came to be considered by three High Courts, Allahabad, Patna and Madras. Turning to the judgment of the Patna High Court, with which we are in agreement, in the case of *Commissioner of Income-tax v. Darbhanga Sugar Co. Ltd.*,⁽⁶⁾ Mr. Justice Ramaswami who delivered the judgment of the Court accepted in the first place the definition of Lord Justice Buckley of the expression “repair” in contradistinction to “renewal”, and with regard to the qualification of repairs introduced by the Legislature by using the expression “current” the learned Judge takes the view that “current” is used in contradiction to past or arrear repairs, and the learned Judge dissents from the view taken by the Allahabad High Court in *Ramkishan Sunderlal v. Commissioner of Income-tax U.P.*,⁽⁷⁾ that “current repairs” mean petty recurring expenditure. The view of the Allahabad High Court, with respect, obviously cannot be accepted because the test that the Allahabad High Court seems to have laid down is as to the quantum of expenditure required for particular repairs. Therefore, if the expenditure is petty, according to the Court it would be claimable as a deduction under s. 10 (2) (v); if the expenditure was substantial or of a large amount then the deduction could not be claimed. With respect, that cannot possibly be a fair test. The extent of the expenditure and the amount to be spent must depend on various factors. It would depend upon the care with which a particular machinery has been used, it would depend upon the quality of the particular part and therefore whereas in one case a small amount may be sufficient, in another case a larger amount may be necessary for the purpose of bringing about the same result. Therefore, we agree with the Patna High Court when they

5. (1911) 1 K. B. 905.

6. (1926) 29 I. T. R. 21.

7. (1951) 19 I. T. R. 324.

1956

NEW
SHORROCK
SPG. & MFG.
CO., LTD.
v.
COMMISSIONER OF
INCOME-TAX,
BOMBAY
Chagla C. J

1956
 NEW
 SHORROCK
 SPG. & MFG.
 Co., LTD.
 v.
 COMMISS-
 SIONER OF
 INCOME-TAX,
 BOMBAY
 Chagla C. J.

refuse to accept the test laid down by the Allahabad High Court. The same view as the Patna High Court has been taken by the Madras High Court and the decision is *Commissioner of Income-tax v. Shri Ram Sugar Mills*.⁽⁸⁾ There Mr. Justice Satyanarayana Rao and Mr. Justice Raghava Rao differed as to the actual decision which turned on the facts of the case, but both the learned Judges disagreed with the view taken by the Allahabad High Court, and Mr. Justice Satyanarayana Rao accepted the definition of Lord Justice Buckley as to what repair is. The learned Judge has not separately considered the meaning to be attached to the expression "current", but has construed the whole expression "current repairs" as repairs which satisfied the definition laid down by Lord Justice Buckley.

Turning to the facts of the present case and applying the test which we suggest is the proper test, it will be noticed that the only ground on which the Tribunal has disallowed this expenditure is that it was incurred after a lapse of 60 years. In our opinion that cannot possibly be the proper test to apply in order to decide whether the repairs were current repairs or not. It is not suggested by the Tribunal that the need for repairing these particular parts arose any time before 60 years. If the need arose for the first time after 60 years and if the expenditure was a revenue expenditure in order to preserve and maintain an asset, viz., the looms, then it would be current expenditure irrespective of the fact that the expenditure was incurred a long time after the asset was first used by the assessee. To take any other view would be putting a premium on those assessees who do not use their plants or machineries with sufficient care. To suggest that if the need for repairs arises within five or ten years then the expenditure should be a permissible deduction, and if the need for repairs arises after a long time it should not be a permissible deduction, would really induce assessees, if they want to claim a deduction under s. 10 (2) (v), so to use their plants or machineries that they would have to be repaired constantly from time to time. It is impossible to say with regard to any particular asset when the need for repairs would arise. It would depend upon various circumstances, and in this case it so happens that the particular parts that were used by the assessee for 60 years were such parts that the need to repair them did not arise earlier. It might have been due to the quality of the parts themselves or to the care with which the parts were used by the assessee, but the fact remains that they had not to be repaired till after the passage of 60 years.

8. (1952) 21 I. T. R. 191.

In our opinion, therefore, this was an expenditure which the assessee company could claim as a permissible deduction under s. 10 (2) (v) of the Act. We will therefore answer question (1) in the affirmative. We express no opinion on question (2) and therefore we will say that it does not arise. Commissioner to pay the costs.

Attorneys for Appellant:—Manilal, Kher and Ambalal & Co.
Attorneys for Respondents:—N. K. Petigara.

Order accordingly.

P. M. P.

1956
NEW
SHORROCK
SPG. & MFG.
CO., LTD.
v.
COMMISSIONER OF
INCOME-TAX,
BOMBAY

Chagla C. J.

APPELLATE CRIMINAL

Before Mr. Justice Gajendragadkar and Mr. Justice Gokhale.

STATE v. S. L. APTE AND ANOTHER.*

Constitution of India, Art. 20 (2)—General Clauses Act (Act X of 1897), s. 26—Indian Penal Code (Act XLV of 1860), s. 409—Indian Insurance Act (Act IV of 1938), s. 105—Criminal Procedure Code s. 258 (2)—Managing Directors of an Insurance Company convicted and sentenced for criminal breach of trust of the funds of the Company under s. 409, Indian Penal Code—A subsequent prosecution and order under s. 105 of the Insurance Act whether competent—Whether an order on the same facts under s. 105 (1) a punishment within the meaning of s. 26 of the General Clauses Act or Art. 20 (2) of the Constitution of India.

Where the managing directors of an Insurance Company were previously convicted and punished under s. 409 of the Indian Penal Code for using Rs. 95,000 belonging to the company for their own purpose contrary to the provisions of the Insurance Act, their subsequent prosecution on the same facts under s. 105 (1) of the Insurance Act is barred under s. 26 of the General Clauses Act as well as Art. 20 (2) of the Constitution of India.

Even an order for restitution under s. 105 (1) of the Insurance Act cannot be made in the circumstances inasmuch as such an order amounts to 'punishment' under s. 105.

Bombay State v. Punjamal,⁽¹⁾ *Emperor v. Bhogilal*,⁽²⁾ *Emperor v. Peter D'Souza*,⁽³⁾ referred to.

Loomchand v. Official Liquidators,⁽⁴⁾ relied upon.

CRIMINAL Appeal against the order of acquittal passed by A. B. Bagi, Esquire, Judicial Magistrate, First Class, Poona.

Charge under s. 105 of the Indian Insurance Act, 1938.

The facts are fully stated in the Judgment.

H. M. Choksi, Government Pleader for the State.

S. G. Patwardhan, for Respondent-accused No. 1.

S. G. Patwardhan with K. K. Gadgil for Respondent-accused No. 2.

*Criminal Appeal No. 1258 of 1955.

1. (1950) 52 Bom. L. R. 788.

2. (1931) 33 Bom. L. R. 648.

3. (1948) 50 Bom. L. R. 574.

4. (1953) A. I. R., Mad. 595.