correctness from any other source and acted on a mere suspicion which was not justified. For these reasons we hold that the copy of entries from the Uchanti Bahi supplied to the Income Tax Officer by the Sales Tax Department was not legal and admissible evidence on which the Income Tax Officer could act for imposing extra burden of income tax on the assessee. We are further of the opinion that the Appellate Assistant Commissioner took the correct view of the matter and rightly deleted the addition of Rs. 13,955 which had been made by the Income Tax Officer to the income of the assessee. The Income Tax Appellate Tribunal erred in law in restoring that deletion merely on the basis of the copy of the Uchanti Bahi of M/s. Goel Iron Stores supplied by the Sales Tax Department to the Income Tax Officer, which could not be relied upon for the reasons already stated.

(3) We accordingly answer the question, referred to us, in the negative, that is, in favour of the assessee. The assessee will have his costs which are assessed at Rs. 200.

B. S. G.

INCOME TAX REFERENCE.

Before D. K. Mahajan and Bal Raj Tuli, JJ.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, PATIALA,—
Applicant.

versus

M/s. KHALSA NIRBHAI TRANSPORT, CO., (P.), LTD.,—
Respondent.

Income Tax Reference No. 28 of 1969

November 17, 1970.

Income-tax Act (XI of 1922)—Sections 10(2)(v) and 10(2)(xv)—Transfer of assessee's income-tax case from one place to another—Order of transfer challenged in the High Court by way of writ petition—Fee paid to advocate for conducting the petition—Whether business expenditure allowable under section 10(2)(xv)—Assessee, a transport Company, replacing petrol engines by diesel engines in its buses—Cost of such replacement—Whether revenue expenditure allowable under section 10(2)(v).

The Commissioner of Income-Tax, Punjab, Patiala *v.* M/s. Khalsa Nirbhai Transport Co. (P), Ltd. (Tuli, J.)

Held, that in determining whether the deduction of an expenditure is permissible under section 10(2)(xv) of Income-tax Act, 1922 the test to be applied is whether the expenditure is necessary on grounds of commercial expediency and whether it directly or indirectly facilitates the carrying on of the business. It is not necessary that the expenditure should be incurred for the direct purpose of earning profits or that there should be any direct co-relation in point of time between the expenditure and earning of any profits. Thus the amount of money paid by an assessee to an advocate by way of his fees for filing and conducting a writ petition in the High Court, challenging the transfer of the assessee's income-tax case from one place to another, is an expenditure incurred wholly and exclusively for the purposes of the business and is an allowable deduction under section 10(2)(xv) of the Act. (Paras 3 and 4)

Held, that the replacement of worn-out parts of a machinery does not by itself bring a new asset into existence. If an assessee, who carries on transport business, incurs expenditure on the replacement of the petrol engines of its buses by diesel engines, the expenditure is an allowable deduction. The machineries concerned are buses and not the petrol engines. The replacement of the engine of the bus is only a current repair of the bus. There is no justification for understanding the expression "current repairs" as being equivalent to petty repairs. Hence the expenditure incurred on replacement of a petrol engine of a bus by a diesel engine is allowable as current repairs under section 10(2)(v) of the Act.

(Paras 5 and 7)

Reference made under Section 66(1) of the Indian Income-tax Act, 1922 by the Income-tax Appellate Tribunal (Delhi Bench) for opinion on the following questions of law arising out of Income-Tax Appeal No. 4697 of 1965-66 regarding Assessment year 1957-58:—

1. *Whether on the facts and in the circumstances of the case, the sum of Rs. 750 spent by the assessee by way of fees to the advocate was an expenditure incurred wholly and exclusively for the purpose of the business under section 10(2) (xv) of the Indian Income-tax Act, 1922 ?*
2. *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of Rs. 35,895 was an allowable deduction under section 10(2) (v)?*

D. N. Awasthy and B. S. Gupta, Advocates, for the applicant.

Mr. J. N. Kaushal, Senior Advocate, for the respondent.

JUDGMENT

The judgment of this Court was delivered by:—

Tuli, J.—(1) The assessee, Messrs. Khalsa Nirbhai Transport Company(P) Ltd., Ludhiana, is a private company, which carries on

the business of providing transport to the public. It also derived income from petrol pump up to January 15, 1956. The assessment year with which we are concerned is 1957-58 and the relevant previous year corresponding thereto ended on September 30, 1956. During that year, the assessee-company filed a writ petition in this Court challenging the transfer of its income-tax case from the Income-tax Officer, Ludhiana, to the Income-tax Officer, Ambala, and engaged Shri Bhagat Singh Chawla, Advocate, as its counsel. The fee of Rs. 750 paid to Shri Chawla was disallowed by the Income-tax Officer.

(2) During the same year, the assessee-company incurred an expenditure of Rs. 35,895 on the replacement of petrol engines of its buses by diesel engines and claimed deduction of that amount as revenue expenditure under section 10(2)(v) of the Indian Income-tax Act, 1922 (hereinafter called the Act). The Income-tax Officer, however, held that this expenditure was of capital nature and, therefore, the deduction was disallowed. The assessee-company took an appeal to the Appellate Assistant Commissioner of Income-tax, who agreed with the Income-tax Officer but allowed additional depreciation on the amount of Rs. 35,895. Being dissatisfied with that order, the assessee-company filed an appeal before the Income-tax Appellate Tribunal. That appeal was accepted and the amount of Rs. 750 paid to Shri Chawla and the expenses of Rs. 35,895 incurred on the replacement of engines of the buses were both allowed as business expenses. The Commissioner of Income-tax applied for reference of the case to this Court under section 66(1) of the Act and the Appellate Tribunal being of the opinion that the following two questions of law arise out of the judgment, have referred the same to this Court for opinion :—

(1) Whether on the facts and in the circumstances of the case, the sum of Rs. 750 spent by the assessee by way of fees to the advocate was an expenditure incurred wholly and exclusively for the purpose of the business under section 10(2)(xv) of the Indian Income-tax Act, 1922 ?

(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount of Rs. 35,895 was an allowable deduction under section 10(2)(v) ?

(3) In its appeal before the Income-tax Appellate Tribunal, the assessee-company submitted that it filed a writ petition in the High Court challenging the jurisdiction of the Income-tax Officer, Ambala, on various grounds and for that writ petition it engaged Shri Bhagat Singh Chawla, Advocate, and paid him Rs. 750 by way of his fee. The main ground of attack to the jurisdiction of Income-tax Officer, Ambala, was that the order of the Commissioner of Income-tax transferring the jurisdiction of the assessee's case from the Income-tax Officer, Ludhiana, to the Income-tax Officer, Ambala, was discriminatory in nature, that the said order was passed without affording reasonable opportunity of hearing, and that the purpose behind it was to make the assessment order against the assessee-company on huge incomes. The counsel for the assessee-company argued that apart from causing great inconvenience and expense to the assessee-company, the order was likely to cause great injustice to it, if it was allowed to stand unchallenged and was bound to adversely affect its business. On this ground it was submitted that the assessee-company challenged the said order in the High Court by way of a writ petition which was done wholly and exclusively in the interest of its business and, therefore, expenses incurred thereon were allowable under section 10(2)(xv) of the Act. Reliance was placed on a Division Bench judgment of the Madhya Pradesh High Court in *Binodiram Balchand* v. *Commissioner of Income-tax, M.P.* (1), wherein the learned Judges held—

> "In determining whether the deduction of an expenditure is permissible under section 10(2)(xv), the test to be applied is whether the expenditure was necessary on grounds of commercial expediency and in order directly or indirectly to facilitate the carrying on of the business. It is not necessary that the expenditure should be incurred for the direct purpose of earning profits or that there should be any direct co-relation in point of time between the expenditure and earning of any profits. An Expenditure which may not help the assessee to earn or increase the income may yet be necessary for the business from the point of view of commercial expediency."

(1) (1963) 48 I.T.R. 548.

It was further held :—

" 'Commercial expediency' has to be determined from the point of view of the business and not from the point of outsiders including the taxing authorities."

The question in that case was whether the sums paid by the assessee by way of professional fees to the Income-tax Adviser for his services rendered during and for the conduct of assessment proceedings before the Income-tax authorities were deductible under section 10(2)(xv) of the Act in computing the assessable income of the assessee and it was held that the amount paid by way of professional fees was permissible deduction under section 10(2)(xv) of the Act.

(4) This matter was considered by a Division Bench of the Calcutta High Court in *Commissioner of Income-tax* v. *Calcutta Landing and Shipping Co. Ltd.* (2), and it was held that the amount paid to the Income-tax Consultant was admissible deduction under section 10(2)(xv) of the Act. In that case, the assessee had agreed to pay to the firm of Chartered Accountants a consolidated sum of Rs. 2,000 per year for 12 years for settling each year's income-tax assessment irrespective of whether there was an appeal or not in respect of any particular year. A sum of Rs. 8,000 was paid in the preceding year being fees due for 4 years and this amount was allowed. The assessee claimed the balance of Rs. 16,000 which it had paid to the firm under the agreement, as an allowance under section 10(2)(xv) of the Act, but half of this amount was disallowed on the ground that it pertained to the services of the firm of Chartered Accountants in respect of appeals before the Appellate Assistant Commissioner and the Income-tax Appellate Tribunal. The Appellate Tribunal however, allowed the entire amount of Rs. 16,000 as admissible deduction under section 10(2)(xv) of the Act following the judgment in *Binodiram Balchand's case* (1), The matter was then taken to the Calcutta High Court in reference. The learned Judges referred to the judgment of their Lordships of the Supreme Court in *Commissioner of Income-tax* v. *Malayalam Plantations Ltd.* (3), and *Sree Meenakshi Mills Ltd.* v. *Commissioner of Income-tax* (4), and applying the principles laid down in those two cases

(2) (1970) 77 I.T.R. 575.
(3) (1964) 53 I.T.R. 140.
(4) (1967) 63 I.T.R. 207.

held that "it seems to us that expenses incurred for conducting proceedings before the income-tax authorities may not be apparently related to the assessee's trading activities, but may be justifiably necessary for increasing the assessee's net profits or for the carrying on of the business with larger funds at the disposal of the assessee. From this point of view these expenses are expenses 'for the purpose of the business' in the wider sense the Supreme Court has understood this expression." We respectfully agree with the view expressed in the above judgments and hold that the sum of Rs. 750 paid by the assessee-company to Shri Chawla, Advocate, was an expenditure incurred wholly and exclusively for the purpose of the business and was allowable deduction under section 10(2)(xv) of the Act. While coming to this conclusion, we also notice that in respect of civil writ petition the assessee-company had claimed other law charges also. The order of the Income-tax Officer, 'A' Ward, Ludhiana, shows that in the law charges account a sum of Rs. 4,893 had been debited out of which the payment of Rs. 750 to Shri Chawla, Advocate, and the payment to Dewan N.N. Chopra, Advocate, for income-tax appeal cases amounting to Rs. 2,310 were disallowed. The other expenses by way of court-fee, process-fee and other miscellaneous expenses incurred in the filing of the writ petition were evidently allowed although these were also incurred in connection with the same writ petition for which Shri Chawla Advocate was engaged as a counsel. There is no difference in the kind or nature of expenditure and, therefore, a clear inconsistency is to be found in the order of the Income-tax Officer and the Appellate Assistant Commissioner while allowing expenses of civil writ petition other than the fee paid to the counsel.

(5) As regards the second question referred to us, there is a clear conflict between the Mysore High Court and the Andhra Pradesh High Court. The judgment of the Mysore High Court delivered by K. S. Hegde, J., (now a Judge of the Supreme Court) and K. Bhimiah, J., is reported as *Hanuman Motor Service* v. *Commissioner of Income-tax, Mysore* (5). That was a case of replacement of petrol engines by diesel engines by a transport company and, therefore, is on all fours with the case before us. The learned Judges held that the machineries concerned were buses and not the petrol engines that were replaced. The replacement of worn-out parts of machinery does

(5) (1967) 66 I.T.R. 88.

not by itself bring a new asset into existence. The fact that an old part of a machinery was replaced by a new part did not mean that a new asset has been brought into existence. In relation to the bus concerned, the replacement of its engine was only a current repair of that bus, there was no justification for understanding the expression 'current repairs' as being equivalent to petty repairs, and the expenditure claimed was allowable as current repairs under section 10(2)(v). While coming to that conclusion the learned Judges relied on a Bench decision of the Madras High Court in *Commissioner of Income-tax and Excess Profits Tax* v. *Sri Rama Sugar Mills Ltd.*, (6), and the judgment of a Division Bench of the Bombay High Court in *New Shorrock Spinning and Manufacturing Co. Ltd.* v. *Commissioner of Income-tax* (7).

(6) The judgment of the Andhra Pradesh High Court reported as *R. B. Shreeram and Co. (Private) Ltd.* v. *Commissioner of Income-tax, A.P.* (8), is by P: Jaganmohan Reddy, C. J.(now a Judge of the Supreme Court) and Venkatesam, J. The learned Judges referred to *Atherton* v. *British Insulated and Helsby Cables Ltd.*, (9), where Viscount Cave, in the course of his speech at page 213 of the report said—

> ".....when an expenditure is made, not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade, ... there is very good reason (in the absence of special circumstances leading to an opposite conclusion) for treating such an expenditure as properly attributable not to revenue but to capital."

They also relied on a judgment of the Privy Council in *Rhodesia Railways Ltd.* v. *Income-tax Collector, Bechuanaland Protectorate* (10), and held that the expenditure incurred for the replacement of petrol engines by diesel engines was a capital expenditure and was not deductible. With great respect to the learned Judges, we are of the opinion that the case before the Privy Council was not applicable. That was a case in which the entire railway track was replaced,

(6) (1952) 21 I.T.R. 191.
(7) (1956) 30 I.T.R. 338.
(8) (1968) 67 I.T.R. 428.
(9) 1926 A.C. 205.
(10) (1933) 1 I.T.R. 227 (P.C.).

thus bringing in an absolutely new asset which could not be described as repairs or current repairs. The learned Judges were, therefore, in error in basing their judgment on that decision. The judgment of the Mysore High Court was not brought to their notice.

(7) A Division Bench of this Court in *Commissioner of Income-tax, Punjab, Jammu & Kashmir and Himachal Pradesh* v. *Sheikhupura Transport Co. Ltd.* (11), held that an expenditure of Rs. 14,700 incurred by the assessee, a transport company, in fitting new bodies in place of worn-out ones to five of its lorries fell within the definition of 'current repairs' and was allowable as deduction under section 10(2)(v) of the Act. The learned Judges relied on *Commissioner of Income-tax* v. *Sri Rama Sugar Mills Ltd.* (6) (supra). Recently a Division Bench of the Madras High Court considered this matter in *Commissioner of Income-tax* v. *Coimbatore Motor Transport Co-operative Society for ex-servicemen* (12). In that case, the assessee, a co-operative society engaged in transport of goods and passengers, completely renovated the body of a motor vehicle by putting in a new body on an old chassis. The question was whether what was done was "repairs to machinery" and the expenditure incurred therefor could be properly treated as revenue expenditure. The Tribunal held that it was a case of repairs and the expenditure incurred was allowable. On a reference, the learned Judges agreed with the Tribunal relying on the judgment of the Mysore High Court in *Hanuman Motor Service* v. *Commissioner of Income-tax* (5) (supra) *Commissioner of Income-tax* v. *Sheikhupura Transport Co. Ltd.* (11) (supra) and *Commissioner of Income-tax* v. *Straw Products Ltd.* (13). On the basis of these judgments we have no hesitation in holding that the expenditure of Rs. 35,895 was an allowable deduction under section 10(2)(v) of the Act.

(8) For the reasons recorded above, our answers to both the questions referred to us for opinion are in the affirmative, i.e., in favour of the assessee-company. The assessee will be entitled to its costs which we assess at Rs. 250.

B. S. G.

(11) (1961) 41 I.T.R. 336.
(12) (1968) 70 I.T.R. 165.
(13) (1966) 60 I.T.R. 156 (S.C.).