

CIVIL MISCELLANEOUS.

Before G. D. Kholsa, C.J., and D. K. Mahajan, J.

THE COMMISSIONER OF INCOME-TAX,—Petitioner.

versus

THE SHEIKHUPURA TRANSPORT CO., LTD.—Respondent.

Income-tax Reference No. 10 of 1958.

Indian Income-tax Act (XI of 1922)—Section 10(2) (V)—“Current repair”—meaning of—Replacement of a worn-out body of a lorry—Whether included in the expression current repair.

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Sept.' 20th.

Held, that it is difficult to define what ‘current repair’ is, but it means a repair which keeps a vehicle like a lorry in running condition and the replacement of a worn-out body would inevitably fall within the definition of ‘current repair’, because although the entire engine and the chassis are usable and can be retained, the lorry cannot be maintained and used unless its body is renewed. If the cost of new lorry is much more than the cost incurred on replacing the body, it must fall within the definition of current repair.

Case referred by the Income-Tax Appellate Tribunal, Delhi Bench, under section 66(1) of the Indian Income Tax Act, for the opinion of the High Court of Judicature, for the State of Punjab at Chandigarh, on the following question of law :

“Whether on the facts and in the circumstances of this case, the expense of Rs. 14,700, incurred in fitting new bodies in place of old worn-out bodies of six lorries is an expense allowable under section 10(2)(v) of the Indian Income-tax Act ?”

D. N. AWASTHY AND H. R. MAHAJAN, ADVOCATES, for the Petitioner.

B. R. TULI, J. S. WASU AND K. S. KWATRA, ADVOCATES, for the Respondents.

JUDGMENT

Khosla, C. J.—

KHOSLA, C.J.—This is a reference made by the Appellate Income-tax Tribunal under section 66 of the Indian Income-tax Act, and the following question of law has been referred to us for our opinion:—

“Whether on the facts and in the circumstances of this case, the expense of Rs. 14,700 incurred in fitting new bodies in place of old worn-out bodies of six lorries is an expense allowable under section 10(2) (v) of the Indian Income-tax Act?”

The facts briefly are that the assessee is a transport company running a number of lorries for the transport of passengers. During the financial year 1953-54, which corresponds to the assessment year 1954-55, a sum of Rs. 14,700 was expended by the assessee-company in fitting new bodies in place of the old ones on five of the lorries which were being run by the company. The company claimed that this amount was deductible as current repairs within the meaning of section 10(2)(b) of the Indian Income-tax Act. The Income-tax Tribunal held that this amount was allowable and decided in favour of the assessee. The Commissioner of Income-tax then moved the Tribunal to state a case for the opinion of this Court. The Tribunal had, in the original order out of which this point of law has arisen, referred to two decisions of the Department in which it has been held that replacing of worn-out lorries or bodies is revenue expenditure and not capital expenditure. The matter in this form has not so far been considered by any High Court, and

it is, therefore, advisable to consider the matter from first principles.

In dealing with this matter, I should like to confine myself to the field within the confines of which this case lies and not venture into the treacherous areas of generalisations. The question really is one of degree—how far can a repair be considered current repair and not a replacement or investment in expenditure of a capital nature. There is no evidence to show what the cost of a new lorry is, but we are told that it is in the neighbourhood of Rs. 40,000. The total amount spent on renewing the old bodies of these lorries is Rs. 14,700. Therefore, the amount comes to a little less than Rs. 3,000 per lorry. The old lorries are said to have been worn out and, therefore, not serviceable. Also it must be remembered that a transport company, which runs lorries for the transport of passengers, has to make its vehicles look attractive and roadworthy, even though the engine and the chassis of the lorry may not be worn-out. If the lorries of a company look worn-out and are creaky, the passengers will be reluctant to use them, and the transport company may find it that it is losing custom, because it is failing to renew or adequately repair the lorries or make them look attractive. The body forms only a small part of the entire vehicle as far as the cost is concerned. It is a matter which does not have to be proved by evidence that the chassis and the engine are the most expensive parts of a lorry. These have to be imported from outside. The bodies are built by local craftsmen and are comparatively less expensive. There is no material on the record to show if any part of the material from the old bodies was used, but even if no part of it was used, it can scarcely be said that the company

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was acquiring a new asset or adding to the number of its vehicles. The replacement of a tyre or a wheel would certainly be deemed current repairs. The replacement of some of the minor parts such as a carburettor would also be deemed to be a current repair. It is difficult to define what 'current repair' is, but it means a repair which keeps a vehicle of this kind in running condition, and the replacement of a worn out body would inevitably fall within the definition of 'current repair', because although the entire engine and the chassis are usable and can be retained, the lorry cannot be maintained and used unless its body is renewed. If it be true that the cost of a new lorry is Rs. 40,000, then the cost incurred on replacing the body is a little more than 7 per cent which is a very small amount as compared to the original capital investment.

A case of a somewhat similar type was considered by the Madras High Court in *Commissioner of Income-tax and Excess Profits Tax v. Sri Ram Sugar Mills Ltd.* (1). In this case the assessee-company carrying on the business of manufacturing sugar replaced one of the boilers in the company, and the question was whether the replacement of this boiler must be deemed to be capital expenditure or revenue expenditure. The decision of the Court was that it was revenue expenditure. Our attention was drawn to the fact that one of the two Judges, who dealt with this matter, held that it was capital expenditure, but the fact remains that the decision of the Court was in favour of the assessee, and, in any event, with great respect, I am inclined to agree with the decision of Satyanarayana Rao, J., who held that the expenditure incurred in replacing the boiler was in

(1) 21 I.T.R. 191.

the nature of revenue expenditure. In a case, which came before the Privy Council from Rhodesia, their Lordships were called upon to consider whether the expenditure incurred in renewing 74 miles of railway track owned by a railway company was capital expenditure or revenue expenditure. The total railway track owned by the company ran into 394 miles, and the Judicial Committee held that the expenditure incurred in renewing 74 miles must be deemed to be revenue expenditure. It is, therefore, really a question of degree. Where a comparatively small amount of money is spent in again bringing a piece of machinery, a house, a factory or a vehicle into good running condition, then the expenditure will be treated as revenue expenditure, but where the expenditure is considerable, such as more than 50 per cent of the total cost, or if the expenditure is on something which has enduring value, then it will be argued that the expenditure is of a capital nature and not of a revenue nature. Our attention was also drawn to a decision of the Bombay High Court reported as *New Shorrock Spinning and Manufacturing Co. Ltd v. Commissioner of Income-tax* (1). In this case certain parts of looms were replaced, and the Bombay High Court held that the replacement constituted current repairs and the expenditure incurred was revenue expenditure. Another case, to which our attention was drawn, is *Bullcroft Main Collieries Ltd. v. O'Grady* (2). In this case the chimney owned by a colliery company had become unsafe and even dangerous. The company built a larger chimney on an adjacent site. The expenditure incurred on building the new chimney was held to be capital

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(1) 30 I.T.R. 338.

(2) 17 Tax Cases 93.

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expenditure. That case, however, has no similarity to the case before us. In that case the old chimney continued working and was not only replaced by the new chimney but the entire furnace was a new one and at a different place. This was, therefore, clearly a new asset and an addition to the other capital assets owned by the company. In the present case, I am inclined to the view that the expenditure incurred on renewing the bodies was comparatively small and must be said to fall within the definition of current repairs. I would, therefore, answer the question referred to us in the affirmative. The respondent will be allowed his costs which we assess at Rs. 200.

Mahajan, J. MAHAJAN J.—I agree.

K.S.K.

REVISIONAL CRIMINAL.

Before Harbans Singh, J.

THE NEW SUTLEJ TRANSPORT COMPANY PRIVATE
LTD.,—*Petitioner.*

versus

STATE,—*Respondent.*

Criminal Revision No. 267 of 1960.

1960

Oct' 13th.

Minimum Wages Rules (1950)—Rule 26-A added by the Governor of Punjab in 1958—Whether ultra vires the Act.

Held. that the object of the Minimum Wages Act is to ensure the minimum wages to an employee and also to prescribe the maximum period of working which shall be considered as a normal working day, and further to see that extra payment is made for any overtime spent. Section 13 of the Act deals with the fixing of hours for a