
(2008) 08 KAR CK 0061
In the Karnataka High Court
Case No : Income Tax A. No. 41 of 2002

Banashankari Medical and Oncology Research Centre Ltd.	APPELLANT
Vs	
Joint Commissioner of Income Tax	RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Citation : (2009) 316 ITR 407

Hon'ble Judges : K.L. Manjunath, J;A.S. Pachhapure, J

Bench : Division Bench

Advocate : S. Parthasarathi, for the Appellant; M.V. Seshachala, for the Respondent

Final Decision : Allowed

Judgement

K.L. Manjunath, J.—This appeal is by the assessee challenging the divergent findings of the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, Bangalore Bench in I.T.A. No. 458/Bang/ 2000 dated October 29, 2001, raising the following substantial question of law:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the payment to the Bangalore Cancer Research Foundation of Rs. 3 lakhs in the year of account was for purchase of the equipment and not for the user of the same?

2. The facts of this case are as hereunder:

3. The appellant-assessee has taken certain equipments on lease for which a sum of Rs. 10,00,000 is paid as deposit and it is also paying rentals payable to the owner of the equipments. The Assessing Officer considering the amount of Rs. 10,00,000 paid as deposit and the rentals paid by the assessee is in the nature of acquiring the capital, did not allow the deduction under the head "revenue expenditure". Aggrieved by the same, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) reversed the order passed by the Assessing Officer, against which,

the Revenue went up in appeal before the Income Tax Appellate Tribunal. The Tribunal has reversed the order passed by the Commissioner of Income Tax (Appeals) and confirmed the order passed by the Assessing Officer. Against the order of the Tribunal, the present appeal is filed.

4. Having heard the counsel for the parties, we notice the following undisputed facts.

5. The equipments are not owned by the assessee. It is hired by the assessee. When the assessee is only a lessee and has paid lease charges, such expenses cannot be treated as capital in nature. It is no doubt true that the assessee has paid the deposit of Rs. 10,00,000 which has to be adjusted towards the rentals. When such being the case, we are of the opinion that the Commissioner of Income Tax (Appeals) was justified in reversing the findings of the Assessing Officer, but the Tribunal without considering the legal aspect and without any basis has wrongly come to the conclusion that the assessee has acquired the equipments. On facts, we notice that the assessee has not acquired any assets and only the rentals were paid by the assessee which has to be treated only as an expenditure and not to acquire the assets. In the result, we have to answer the question of law in favour of the assessee and reverse the findings of the order passed by the Income Tax Appellate Tribunal.

6. In the result, the appeal is allowed. The order passed by the Income Tax Appellate Tribunal, Bangalore, in I.T.A. No. 458/Bang/2000 dated October 29, 2001 is hereby set aside, thereby confirming the order passed by the Commissioner of Income Tax (Appeals).