(1998) 02 MAD CK 0154

In the Madras High Court

Case No : T.C. No. 1234 of 1984 (Reference No. 1053 of 1984)

Commissioner of Income Tax APPELLANT

Vs

Asher Textiles Ltd. RESPONDENT

Date of Decision : 11-02-1998

Acts Referred:
Income Tax Act, 1961 — Section 37

Citation : (1999) 240 ITR 483

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : R. Sivaraman, for C.V. Rajan, for the Appellant; None, for the Respondent

Judgement

R. Jayasimha babu, J.—For the assessment year 1973-74, the following question has been referred for our decision at the instance of the Revenue :

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the extra expenditure of Rs. 70,000 incurred by the assessee in replacing an old ceiling made of hardboard set on wooden frames with thermostat wood insulation board set in aluminium frames should be allowed as a revenue expenditure ?"

2. Our answer to this question is in the affirmative, against the Revenue and in favour of the assessee. A similar question arose before this court in the cases of Commissioner of Income Tax Vs. Binny Ltd., and Commissioner of Income Tax Vs. Jawahar Mills Ltd. (No. 2), . The first of these two cases arose out of the fact situation which showed that the roof of the spinning department of a mill which required replacement was replaced, such replacement being necessary for the proper utilisation of the structure as a whole. This court held that carrying out such repair did not result in a new asset being created or enduring benefit derived from the work done. In the latter case, a false ceiling was installed. The expenditure incurred thereon was held to be expenditure of a revenue nature, as no new asset had been created and no enduring benefit derived from that work.

3. While the expenditure incurred in bringing a building into existence is undoubtedly capital in nature, the repairs and replacements to portions of the building for the continued enjoyment of that building is not capital expenditure. The fact that new material has to be used while replacing a worn out or damaged part of portion of a building does not result in a new asset being created. Every part of the building is not to be regarded as a separate asset. It is the structure as a whole which has utility and repairs and replacements to that structure for the continued utility of the structure as a whole, cannot be regarded as capital expenditure. Replacement of hardboard set on wooden frames with thermostat wood insulation boards set in aluminium frames is undoubtedly revenue expenditure and does not constitute capital expenditure.

4. The question, is therefore, answered against the Revenue and in the affirmative.