

(1998) 11 MAD CK 0091

In the Madras High Court

Case No : Tax Case No. 1487 of 1985 (Reference No. 947 of 1985)

Commissioner of Income Tax

APPELLANT

Vs

Crescent Films (P.) Ltd.

RESPONDENT

Date of Decision : 17-11-1998

Acts Referred:

Income Tax Act, 1961 — Section 37

Citation : (2001) 171 CTR 239 : (2001) 248 ITR 670 : (2001) 118 TAXMAN 214

Hon'ble Judges : R. Jayasimha Babu, J;A. Subbulakshmy, J

Bench : Division Bench

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

Judgement

R. Jayasimha Babu , J.—Learned counsel for the Revenue contended that the advance which has been held to be a trading loss, though made in the course of business was not made in the course of money-lending business and, therefore, the money so advanced has only to be regarded as a further advance of capital and not an advance which can be regarded as a trading transaction.

2. The assessee which carries on the business of distribution of films had paid Rs. 7,50,000 to the producer for society distribution rights for a film under production. The producer having run into difficulty and finding himself in a situation where he would be unable to complete the film requested the assessee to lend a sum of Rs. 1,10,000 which sum was to be dealt with in a manner different from the manner in which the sum of Rs. 7,50,000 paid earlier as consideration for the distribution rights of the film was to be treated. These sums were ultimately not repaid to the assessee and the assessee claimed it as a trade loss. We are unable to agree with the submission made by learned counsel for the Revenue that every advance claimed as a trading advance must have been made by a person who carries on the business of money-lending. We are unable to read any such requirement into section 37 of the Income Tax Act.

3. In any business, credit is an indispensable part and advances of a temporary

nature with or without interest is a common incidence of business. It is not necessary that every business should register itself under the Money Lenders Act and make any claim in relation to any advance made by it only in the capacity of a person carrying on money lending business. It is also not possible to agree with the submission that any money spent to salvage the capital would automatically result in impressing the money so spent with the character of capital expenditure. If the nature of the expenditure or the nature of the transaction is such as to be regarded as one in the revenue field, it cannot be treated as capital, merely because such expenditure was incurred for the purpose of salvaging the capital.

4. In this case, the sum of Rs. 7,50,000 paid by the distributor would have been lost to the assessee, had the picture not been completed as the money paid him for acquiring distribution rights and without the picture, there was no likelihood of the assessee realising his investment. In order to ensure that the picture was completed, the assessee had agreed to lend money and that lending" was a separate transaction and was not part of the distribution arrangement. The money so lent having been found to have become irrecoverable by reason of the picture failing at the box office and the producer being unable to repay his debts, the money so lost to the assessee was rightly held by the Commissioner and the Tribunal to be a trading loss. Learned counsel for the Revenue, however, contended that the decision of this court in the case of CIT v. Coimbatore Pictures (P.) Ltd. [1975] 90 ITR 452 should govern this case. The fact that the assessee therein was also a distributor even as the assessee here is a distributor, does not imply that that decision, without anything more, will be applicable to this case as well. A decision is to be regarded as a precedent for its ratio decidendi and not for the facts in relation to which such ratio was laid down. The ratio of that case as we read it is that before a deduction can be claimed on the ground of business loss, the loss should have been incurred in the course of business, and it should be in the nature of revenue loss. We are in entire agreement with that proposition. On the facts of this case, the loss to the assessee being a revenue loss which had been incurred in the course of business, the assessee was entitled to deduct the same u/s 37 of the said Act.

5. We answer the question referred to us in favour of the assessee and against the Revenue.