

(1994) 01 MAD CK 0066

In the Madras High Court

Case No : Tax Case No. 1065 of 1981 (Reference No. 557 of 1981)

Commissioner of Income Tax

APPELLANT

Vs

Gurunathan

RESPONDENT

Date of Decision : 20-01-1994

Acts Referred:

Income Tax Act, 1961 — Section 30, 37, 43(2)

Citation : (1995) 217 ITR 174 : (1995) 211 ITR 174

Hon'ble Judges : Venkataswami, J;Rangarajan, J

Bench : Division Bench

Advocate : N.V. Balasubramanian, for the Appellant; R. Janakiraman, for the Respondent

Judgement

Rangarajan, J.—The facts leading to this reference are as follows :

The assessee is an individual who had taken a property on rent for the purpose of business, on an agreement dated October 27, 1966, for a

period of four years, paying a rent of Rs. 3,000 per mensem. This agreement provided that on termination, the tenant should vacate the premises,

and in default, he would pay an amount of Rs. 5,000 per mensem till he vacates the property. The assessee, however, provided in the accounts for

the earlier years even after October 21, 1970, rent only at the rate of Rs. 3,000 per mensem. The landlord had instituted a suit for possession and

damages, and that suit was decreed on November 18, 1970.

2. The assessee had resisted that suit by contending that the tenancy itself had been renewed by an oral agreement on the same terms. However,

by reason of the decree, the assessee had to pay the additional amount of Rs. 2,000 per mensem. The assessee, therefore, provided in the

accounts for the assessment year 1974-75 an additional amount of Rs. 66,800 a

sum of Rs. 13,401 towards litigation expenses and also a sum of Rs. 4,673 towards costs.

3. The Income Tax Officer did not allow the deduction of these amounts. But, on appeal, the Appellate Assistant Commissioner allowed only the litigation expenses. The assessee appealed further. The Appellate Tribunal found that the liability to pay these amounts accrued only in the year in question on account of the decree of the court and, therefore, the deduction was admissible u/s 37 of the Income Tax Act.

4. At the instance of the Revenue, the following question has been referred :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in allowing the arrears of rent as a deduction u/s 37 of the Income Tax Act, 1961, in the assessment year 1974-75?

5. Learned counsel for the Revenue argued that the amount was payable as rent under the original agreement itself, and the assessee ought to have

provided for a sum of Rs. 5,000 per mensem in the accounts for the earlier years and since this amount related to the earlier years, this was not

admissible as a deduction for the year in question. We are unable to agree with this contention, because the original agreement provided for

payment of Rs. 5,000 per mensem only in default. Since the assessee had claimed that the lease had been renewed, he had actually provided for

the accepted rent of Rs. 3,000 in the accounts. The landlord having disputed the claim of the assessee of the renewal of the lease, the matter had

gone to the court, and the additional amount had been decreed. The liability to pay the additional amount had thus accrued only when the court had

decreed the suit. It is stated that when the matter was taken up on appeal, the assessee had subsequently compromised by accepting payment of

rent for these years, and on the landlord agreeing to renew the lease for the subsequent years at the rate of Rs. 4,000 per mensem. This also

underlines the belief of the assessee that the lease had been renewed, and hence, what was provided in the accounts in the earlier years at Rs.

3,000 per mensem was the accepted liability for payment of rent. The additional amount was a disputed amount which became payable only on the

suit being decreed by the court. We are, therefore, satisfied that the finding of the Appellate Tribunal that the amount became payable only in this

year is correct. Learned counsel for the Revenue pointed out that if the nature of

the amount was rent, it was to be allowed only u/s 30 of the Act.

Even then, that section allows the deduction of rent paid, and the word ""paid"" has been defined in section 43(2) to mean actually paid or incurred

according to the method of accounting on the basis of which the profits and gains of the business are computed. Since, admittedly, the assessee

was following the mercantile method of accounting, and the liability to pay the additional amount accrued only on the basis of the order of the

court, which was during the previous year relevant to this assessment year, the deduction of the amount in computing income for this year was

correct. We, therefore, answer the question in the affirmative and against the Revenue. No costs.