
(2000) 11 J&K CK 0011
In the Jammu And Kashmir High Court
Case No : Income Tax R. No. 8 of 1979

Commissioner of Income Tax

APPELLANT

Vs

Muhammad Hussain

RESPONDENT

Date of Decision : 17-11-2000

Acts Referred:

Income Tax Act, 1961 — Section 256(1), 30, 37, 37(1)

Citation : (2001) 247 ITR 347

Hon'ble Judges : B.P. Saraf, C.J.; Syed Bashir-ud-Din, J

Bench : Division Bench

Advocate : Anil Bhan, for the Appellant; None, for the Respondent

Judgement

B.P. Saraf, C.J.—By this reference u/s 256(1) of the Income Tax Act, 1961 ("the Act"), the Income Tax Appellate Tribunal, Amrit-sar

Bench, Amritsar ("the Tribunal"), has referred the following" question of law to this court for opinion at the instance of the Revenue :

Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that the expenditure of Rs. 31,500 is of revenue

nature and not of a capital nature and that the same is allowable deduction from the taxable income ?

2. This reference pertains to the assessment year 1974-75. Mr. Anil Bhan, senior Central Government standing counsel, appears for the Revenue.

None appears for the assessee.

3. The material facts of the case, briefly stated, are as follows. The Municipal Committee, Srinagar, constructed a number of shops at Srinagar for

the purpose of giving them on lease. It conducted an auction for that purpose. The assessee took one of the shops, being shop No. 9, on lease in

the auction. According to the terms of the auction, the assessee was required to pay Rs. 63,000 as "nazrana" in two annual instalments. According to the terms of the lease, the lease was for a period of 17 years and the assessee was to pay a monthly rent of Rs. 300. The agreement of lease also provided for forfeiture of the tenancy in case of default in payment of rent for three consecutive months. The assessee paid the first instalment of Rs. 31,500 during the previous year relevant to the assessment year 1974-75 and claimed deduction for the same in its assessment under the Income Tax Act as a revenue expenditure. The Income Tax Officer disallowed the claim of the assessee as he was of the view that the payment of Rs. 31,500 was in the nature of premium or nazrana and was capital expenditure. The assessee appealed to the Appellate Assistant Commissioner. In the appeal, it was contended by the assessee that the expenditure had been incurred by it while carrying on and conducting the business of the firm and it was an integral part of profit earning process. The assessee also submitted that the amount paid by it in lump sum might be spread over the period of lease and deduction allowed accordingly. The Appellate Assistant Commissioner was of the opinion that the payment was in the nature of premium and it could not be allowed as rent u/s 30(a) of the Income Tax Act, 1961. He was also of the opinion that the premium could not be apportioned during the period of lease for allowing deduction because it was a capital expenditure. He, therefore, affirmed the action of the Income Tax Officer and dismissed the appeal of the assessee. The assessee appealed to the Tribunal. Before the Tribunal, the assessee contended that it did not acquire any capital asset or a benefit of enduring nature by taking the premises on lease. It was pointed out that even according to the terms of the lease, the tenancy could be forfeited as provided under Clause 5 thereof. The assessee maintained that the payment of Rs. 31,500 was a condition for entering into the agreement for lease without which the lease could not be taken and that, as in the case of rent, the payment of Rs. 31,500 was also incurred for the purpose of carrying on its business. It was submitted before the Tribunal by the assessee that as taking of the shop on lease was necessary for carrying on his business and so also the compliance with all the terms of the lease, the expenditure incurred and claimed by him could not be regarded as expenditure of capital. The case of the Revenue before the Tribunal was

that the liability to pay Rs. 63,000 in two annual instalments was clearly in the nature of premium and as the lease was for 17 years, the assessee had acquired a benefit of enduring nature. The case of the Revenue was that the expenditure of Rs. 31,500, being the first instalment of the premium, was expenditure of capital nature which was not an allowable deduction. The Tribunal observed that the assessee became liable to pay Rs. 63,000 in two annual instalments of Rs. 31,500 each as a condition precedent for entering into the lease agreement of the shop. In addition to the lump sum payment, the assessee was also required to pay rent at the rate of Rs. 300 per month. The lease agreement provided for forfeiture of the tenancy vide Clause 5 in case of default in payment of rent for three months. In view of the forfeiture clause in the lease agreement, the Tribunal held that the assessee did not acquire any benefit of enduring nature or a capital asset. The Tribunal, therefore, held that the expenditure was not of a capital nature but of revenue nature. The Tribunal, accordingly, held that it was an allowable deduction u/s 37(1) of the Act as a revenue expenditure. Aggrieved by the finding of the Tribunal, the Revenue is before us with this reference u/s 256(1) of the Act.

4. We have heard learned counsel for the Revenue and carefully considered the facts of the case. It is clear from the facts of the case that the payment of the sum of Rs; 63,000 in two annual instalments was made for acquisition of the 17 year lease of the shop. The question is whether that right is a capital asset. The answer obviously has to be in the affirmative in view of a catena of decisions of the Supreme Court and the Privy Council. It is well-settled that the premium paid by the lessee for the grant of a lease, whether payable in lump sum or in instalments over the whole period of the lease along with the rent, is normally capital expenditure. The lessee purchases the term of the lease for the premium. As observed by HENRIKSEN (INSPECTOR OF TAXES) Vs. GRAFTON HOTEL LTD., , there is no revenue quality in payment made to acquire such an asset as a term of years. There is a clear distinction between the payment made to acquire an asset and payment made for its use. The periodical payment made for a lease is a revenue expenditure whereas the payment made to acquire the lease would be an expenditure of capital nature.

5. In the present case, for the use of the shop, the assessee was required to pay a monthly rent of Rs. 300. But for the acquisition of the lease, he

was required to pay a sum of Rs. 63,000 in two annual instalments. In such a case, the payment of monthly rent is a revenue expenditure but the payment of the lump sum in two annual instalments to acquire the lease would be a capital expenditure.

6. It is clear from the above discussion that, on the facts and in the circumstances of the case, the Tribunal was not right in law in holding that the expenditure of Rs. 31,500 in the previous year relevant to the assessment year 1974-75, incurred for the purpose of payment of the first instalment of the lump sum payment for obtaining the 17-year lease of the shop in Srinagar at a monthly rent of Rs. 300, was a revenue expenditure. It is an expenditure of capital nature.

7. We, therefore, answer the question referred to us in the negative, i.e., in favour of the Revenue and against the assessee.

8. This reference is disposed of accordingly with no order as to costs.