(1976) 07 MAD CK 0013

In the Madras High Court

Case No : Tax Case No. 13 of 1971 (Reference No. 12 of 1971)

Commissioner of Income Tax (Central) APPELLANT

Vs

Dasaprakash RESPONDENT

Date of Decision : 26-07-1976

Acts Referred:
Income Tax Act, 1961 — Section 37

Citation : (1976) 07 MAD CK 0013

Hon'ble Judges : Sethuraman, J;Ismail, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; S.V. Subramaniam, for Subbaraya Aiyar, Padmanabhan and Ramamani, for the Respondent

Judgement

Sethuraman, J.—The Income Tax Appellate Tribunal, Madras Bench, has u/s 256(1) of the Income Tax Act, 1961, referred the following

question of law for the opinion of this court :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the expenditure of Rs. 37,390

was not of capital nature but it was an expenditure incurred by the assessee wholly for the purposes of its business and allowable as a deduction

u/s 37 of the Income Tax Act, 1961?

2. The assessee is a firm carrying on the business of running a hotel. That hotel business was previously run by one Seetharama Rao and

subsequently it was converted into a partnership. We are concerned in this reference with the assessment year 1965-66, the relevant previous year

ending on 31st March, 1965. The expenditure which is now in dispute has been described as follows :

Rs.

8,990 Putting decorated mirrors with pictures of religious personages in the

pink hall of the hotel used as dining cum-lecture hall.

14,300 Putting up plaster-moulded roof decoration in the above hall with a

view to beautify the premises.

11,567 Fixing plywood panels in restaurant halls and in some living rooms.

900 Fixing carpet in the reception hall.

1,066 Replacement of old and worn-out hinges, etc.

567 Putting frosted glass in the pink hall.

Total Rs. 37,390

3. The Income Tax Officer considered that the expenditure given above could not be said to be on account of current repairs to the building and

that the expenditure incurred had brought into existence an asset of enduring nature. He, accordingly, treated this expenditure as of capital nature

and disallowed the said sum of Rs. 37,390 in computing the total income of the firm. The assessee filed an appeal to the Appellate Assistant

Commissioner who observed that the expenditure was incurred so as to improve the earning scope of the business and that the expenditure was

more of initial nature rather than a regular business expenditure. He held that the expenditure in question had resulted in a benefit of enduring nature

to the assessee-firm. He, therefore, confirmed the disallowance.

4. On further appeal, the Tribunal held that, having regard to the circumstances of the present case, the expenditure incurred by the assessee- firm

was not of capital nature and that the expenditure was incurred wholly for the purposes of its business and was, therefore, allowable as deduction

u/s 37 of the Act. Aggrieved by this order of the Tribunal, the revenue has come up with this reference raising the question mentioned above.

5. Section 37 of the Income Tax Act, 1961, provides for the deduction, of any expenditure not being in the nature of capital expenditure laid out or

expended wholly and exclusively for the purposes of the business or profession. The only question, therefore, is whether this expenditure is of

capital nature or whether it is laid out wholly and exclusively for the purposes of the assessee''s business. As far as the latter aspect is concerned, viz., as to whether it is an expenditure laid out wholly and exclusively for the purposes of the business, there is absolutely no dispute that it has been

incurred, in the present case, only for the purposes of the assessee''s business. We have thus to consider only one point, viz., as to whether the

expenditure has brought into existence any asset of enduring nature so as to be classified as capital expenditure. In the figures that we have already

mentioned, there are items like replacement of old and worn-out hinges and putting of frosted glass in the pink hall. These items are in the nature of

petty replacement of items which already existed and, therefore, these could not be taken as capital expenditure at all. One other item of

expenditure like putting of decorated mirrors with pictures of religious personages or putting of plaster-moulded roof decoration in the dining-cum-

lecture hall was incurred with a view to beautify the premises. Fixing of plywood panels in the halls and in some living rooms would, having regard

to the nature of the business carried on by the assessee, be liable to be classified as revenue expenditure. The expenditure incurred has obviously

been incurred only with a view to keep the place fit for the purpose for which persons assemble in the hall, viz., for taking food and other edibles in

the dining hall. Without a proper atmosphere in the hall, it would not be possible to attract the necessary customers for running the hotel which the

assessee has been carrying on as its business. The items that have been described in the details of expenditure given are also such that they cannot

be said to be of enduring nature, because those items like putting of plaster-moulded roof decoration and fixing of plywood panels would

absolutely be of no use with reference to any other place. They are just fixed in the walls so that they would present an inviting appearance for the

customers assembled there. They cannot be removed and used. Having regard to the nature of the business carried on by the assessee and the

nature of the expenditure described above, we arc satisfied that the Tribunal came to the correct conclusion in holding those items as revenue

expenditure allowable as deduction u/s 37 of the Act. We, therefore, answer the question in the affirmative and in favour of the assessee. The

assessee will have its costs. Counsel''s fee Rs. 500.

