

(1984) 03 KAR CK 0041
In the Karnataka High Court
Case No : Income Tax R.C. No. 226 of 1979

Commissioner of Income Tax, Karnataka

APPELLANT

Vs

Rex Talkies

RESPONDENT

Date of Decision : 14-03-1984

Acts Referred:

Income Tax Act, 1961 — Section 256 (1), 32 (1A)

Citation : (1984) 42 CTR 97 : (1984) 148 ITR 560 : (1984) 18 TAXMAN 363

Hon'ble Judges : S.R. Rajashekhara Murthy, J; Mohammad Sharif, J

Bench : Division Bench

Advocate : H. Raghavendra Rao, for the Appellant; K.R. Prasad, for the Respondent

Judgement

Rajasekhara Murthy, J.—The following question has been referred by the Income Tax Appellate Tribunal, Bangalore Bench, for the opinion of this court, at the instance of the Revenue under s. 256(1) of the I.T. Act, 1961 : Tribunal was right in law in holding that the amount of Rs. 55,651 spent on renovation, addition, alterations, etc., to the furniture, fittings, etc., was allowable as revenue expenditure ?"

2. The assessee, a registered firm, is a tenant of a cinema theatre. During the year ending March 31, 1975, the firm renovated the theatre and incurred expenses such as the following :

Rs. "Furniture polishing materials, etc., 2,449.50 Chair brackets 2,385.00 Cement flooring 2,640.00 Plaster of paris for ceiling & walls 19,625.00 Cement 4,891.00 Ceiling 15,000.00 Wages for fitting chairs 8,660.00" 3. The assessee claimed the above sums as revenue expenditure in its assessment for the year 1975-76. But the ITO disallowed the same on the ground that it was a capital expenditure and allowed depreciation thereon.

4. The assessee unsuccessfully appealed to the AAC., but he succeeded in the appeal before the Tribunal. The Tribunal held that the expenditure incurred by

the assessee on repairs to the building and furniture, etc., was in the nature of current repairs and allowed it as revenue expenditure. Being aggrieved by the order of the Tribunal, the Revenue has come up by way of this reference to this court.

5. The point that arise for consideration is, whether the expenditure incurred by the assessee on renovation, addition, alterations to the furniture, fittings, etc., of the cinema theatre, was rightly allowed as a revenue expenditure.

6. From the nature of the expenditure that the assessee had to incur towards effecting repairs to the ceiling and repairs and polishing of the furniture, etc., it is obvious that the assessee, who was running cinema shows in the theatre as a tenant, had to preserve and maintain the theatre in a fit condition and make it more attractive and comfortable. The Tribunal's finding is that the assessee incurred the said expenses in the course of its business and it was a necessary expenditure.

7. If the outgoing or expenditure is so related to the carrying on or the conduct of the business, then it may be regarded as an integral part of the profit earning process and not for the acquisition of an asset of an enduring nature.

8. In *Empire Jute Co. Ltd. Vs. Commissioner of Income Tax*, , Bhagwati J., speaking for the Bench of the Supreme Court, observed :

"There may be cases where expenditure, even incurred for obtaining advantage of enduring benefit, may, none the less, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principle laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account, even though the advantage may endure for an indefinite future. The test of enduring benefit is, therefore not a certain or conclusive test and it cannot, be applied blindly and mechanically without regards to the particular facts and circumstances of a given case."

9. If the above test is applied, the conclusion is inevitable that what was spent by the assessee was only to run his business more efficiently or more profitably leaving the fixed asset untouched. The amount spent on repairs or on so-called renovation cannot, therefore, be considered as a capital expenditure. Our view also finds support from the decision of the Madras High Court in *Commissioner of Income Tax (Central), Madras Vs. Dasaprakash*, in which the facts of the case lie in close parallel with the facts of the present case.

10. Similar was the view taken by the Allahabad High Court in *Kanpur Dyeing*

and Printing Co. Vs. Commissioner of Income Tax, Coming nearer home, this court in Hanuman Motor Service Vs. Commissioner of Income Tax, Mysore, held that the expenditure incurred by the assessee therein for replacing a petrol engine by diesel engine was in the nature of revenue expenditure.

11. We are, therefore, of the opinion that the view taken by the Tribunal cannot be said to be erroneous or contrary to law.

12. Mr. Raghavendra Rao, learned counsel for the Department, however, urged that the assessee as a tenant is entitled to certain deductions by way of written down value of the structure or work put up by him as a lessee, in respect of the depreciation of such structure or work under s. 32(1A) of the Act and, therefore, it must be presumed that whatever he has spent by way of renovation or improvement to the building should also be regarded as a capital expenditure. We do not think that s. 32(1A) could be construed in that manner. Section 32(1A) is a special provision enacted for the benefit of lessees providing for depreciation on the structure or work put up by them in leasehold premises which, in the normal course, they are not entitled to, since they are not the owners. That is not the same thing to state that whatever is spent by the lessees or tenants, should always be regarded as a capital expenditure. The said section has absolutely no relevance to the claim of the assessee in the instant case.

13. In the result, we answer the question in the affirmative and against the Department.