(1949) 09 CAL CK 0003

In the Calcutta High Court

Case No : Reference No. 9 of 1949

Commr. of Income Tax — APPELLANT

Vs

Globe Theatres Ltd. — RESPONDENT

Date of Decision : 02-09-1949

Acts Referred:

Income Tax Act, 1922 — Section 10, 10(2)

Citation : AIR 1952 Cal 145 : (1950) 18 ITR 403

Hon'ble Judges : Harries, C.J;Chatterjee, J

Bench : Division Bench

Advocate : S.K. Gupta and J.C. Pal, for the Appellant;E. Meyers, for the Respondent

Judgement

Harries, C.J.—This is a Reference made by the Appellate Tribunal, Bombay Bench, u/s 66, Income Tax Act, stating a case for the opinion of this Court upon the following question:

"Whether, on the facts & circumstances of the case, the sum of Rs. 10,000/- paid by the assessee to Madras Publishing House, or any part thereof was an allowable deduction in computing the assessee''s income u/s 10 Income Tax Act."

The assessees were Messrs. Globe Theatres Ltd., a public joint stock company, which carry on business as exhibitors of cinema pictures. For the purpose of the business they own certain cinemas & take leases of others & at present they are running seven cinemas in various cities in India.

2. It appears that the assessees in the year 1937 advanced a sum of Rs. 10,000/- to a company in Madras known as the Madras Publishing House Ltd. It seems that this latter company were proposing to build a cinema in Madras & this sum was advanced upon an undertaking given by the Madras Publishing House Ltd., that the assessees would have a lease of the premises. The financial position of the Madras Publishing House Ltd., however, was unsatisfactory & the cinema was never built with the result that the assessees of course never

obtained a lease & wrote this sum off ass a bad debt.

3. The assessees claim that this sum was an allowable deduction in computing the assessees'' income u/s 10, Income Tax Act. But the Income Tax Officer as well as the Appellate Assistant Commissioner did not allow the same as an allowable deduction. On appeal, however, the Appellate Tribunal came to the conclusion that it was a business expenditure & eventually the order of the Appellate Assistant Commissioner was set aside .& the case remanded to him for decision in accordance with law. Application was made to the Appellate Tribunal to state a case upon the question which I have indicated, & the case was stated.

4. The Income Tax authorities, who applied to have the case stated, have appeared through Dr Gupta who has contended that this payment of Rs. 10,000/- to the Madras Publishing House Ltd. was in the nature of capital expenditure. He has contended that it was a payment made to the Madras Publishing House Ltd. for a lease of the cinema which was to come into existence. It was, in short, a payment as selami for the lease.

5. If the payment was a payment for a lease to be granted to the assessees, there would be considerable force in Dr. Gupta''s contention. But it does not appear that the sum of Rs. 10,000/- was paid as premium or selami for the lease, but on the contrary, was an advance payment of rent under the lease which was to come into existence. If it was an advance payment of rent under a lease to, come into existence, there could be no question that it was a sum of money expended by the assessees in order to earn profits & would come within Section 10 (2) (xv), Indian Income Tax Act & would be an allowable deduction.

6. The facts are not stated as clearly as they might be in the statement of case, but I think, it is clear from the assessees'' letter to the taxing authorities, dated 2-10-1945, which is Ex. B, that this sum was not a payment in the nature of salami or a premium. It is referred to in that letter as a sum of Rs. 10,000/- which was deposited by the assessees with the Madras Publishing House Ltd. A premium or a selami would not be deposited, but the word is quite appropriate to a payment made by way of advance of rent for a lease which was to come into existence.

7. It appears that the taxing authorities certainly regarded a similar payment received by the assessees in this light because the assessees were taxed in respect of a sum of Rs. 9,000/-which had been deposited with them by a sub-lessee & this deposit appears to have been in the nature of an advance of rent made by the sub4essee to the assessees. In short, the assessees treated the payments made by them & the payments received by them in connection with these leases as ordinary payments in the course of business & actually included the payment of Rs. 9,000/- to them as part of their receipts.

8. The fact of course that the assessees were taxed on this sum of Rs. 9,000/- does not conclude, the matter as they may have been wrongly assessed on that sum. However^ it does show what was the true nature of these payments. The

payment, as I have said, appears to have been made not as a premium but as an advance payment of rent made to assist the Madras Publishing House Ltd. to erect & complete the cinema. If it was such a payment, it is conceded that the amount would have to be allowed as a deduction in computing the asses-sees'' income.

9. For the reasons which I have given the question submitted must be answered in the affirmative. The assessees are entitled to the costs of these proceedings. Certified for two Counsel.

Chatterjee, J.

10. I agree.

