
(2014) 11 AP CK 0124

In the Andhra Pradesh High Court

Case No : Income Tax Tribunal Appeal No. 1 of 2004

F.D. Khan & Co.

APPELLANT

Vs

The Commissioner of Income Tax, A.P.

RESPONDENT

Date of Decision : 19-11-2014

Acts Referred:

Citation : (2014) 11 AP CK 0124

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : Bathini Ravindra, Advocates for the Appellant; J.V. Prasad, SC, Advocates for the Respondent

Judgement

L.N. Reddy, J.—This appeal is presented against the order, dated 09.01.2003 passed by the Hyderabad Bench of the Income Tax Appellate Tribunal in I.T.A. No. 147/Hyd/2002, referable to the assessment year 1998-99.

2. The appellant is a firm undertaking the business in Textiles. In the returns submitted for the assessment year 1998-99, the appellant has shown a sum of Rs. 3,77,290/- as expenditure for office modification. The Assessing Officer treated that as "capital expenditure" and did not allow deduction. Aggrieved by the order passed by the Assessing Officer, the appellant approached the Commissioner (Appeals). The appeal was rejected through order, dated 07.02.2002. Thereafter, he filed I.T.A. No. 147/Ftyd/2002 before the Tribunal and that was also dismissed.

3. Heard Sri B. Ravindra, learned counsel for the appellant and Sri J.V. Prasad, learned counsel for the respondent.

4. The only controversy is as to whether the expenditure incurred by the appellant for modification of the office premises must be treated as "capital expenditure" or "revenue expenditure". The Assessing Officer treated as the former and the same was affirmed by the Commissioner and the Tribunal.

5. The difference between the "revenue expenditure" on the one hand and the "capital expenditure" on the other hand is clearly discernible in many cases. The test is the durability of the asset that is acquired through the amount concerned. Many a time, it becomes difficult to differentiate between the two in relation to certain activities. For example, the alteration to an existing item of immovable property is prone to be treated as either of them, depending upon the perception of the concerned officer or the predominant object underlying the expenditure. Even if it is an alteration, if it is going to endure and become part of the immovable property, it deserves to be treated as "capital expenditure". If on the other hand, the modification or addition is such that it can be detached and taken away or substituted with another with a little effort, it has to be treated as "revenue expenditure", notwithstanding the amount involved.

6. The assessee is a reputed cloth showroom at Hyderabad. The effecting of modifications in the premises became necessary on account of the retirement of one of the partners. The record is not clear as to whether the premises are owned by firm or whether the left over partners are conferred with absolute rights over the property. That fact becomes relevant since the repairs undertaken by the owner of premises assume a substantially different legal character compared to those, which are undertaken by the lessee of the premises. There was no finding by the Assessing Officer that the modification was of a permanent nature of the premises. It is well established that even where two views are possible, on a set of facts, the one that helps the assessee must be adopted.

7. We therefore allow the appeal and set aside the order of assessment as confirmed by the Commissioner and the Tribunal. The amount involved shall be treated as "revenue expenditure".

8. The miscellaneous petition filed in this appeal shall also stand disposed of. There shall be no order as to costs.