

**(1989) 03 DEL CK 0035**

**In the Delhi High Court**

**Case No :** Income-tax Case No. 124 of 1987

Rajdev Singh and Co.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

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**Date of Decision :** 31-03-1989

**Acts Referred:**

**Citation :** (1990) 181 ITR 38

**Hon'ble Judges :** C.L. Choudhary, J;B.N. Kirpal, J

**Bench :** Division Bench

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## **Judgement**

B.N. Kirpal, J.—This is a petition u/s 256 of the Income Tax Act, 1961, seeking a direction from this court to the Tribunal to state the case and refer the following questions of law to this court :

"(1) Whether the Tribunal is justified in concluding that one-fourth of the total expenditure of Rs. 17,24,480 incurred on the rooms, bathrooms, restaurant and other appurtenant fittings is capital expenditure and such conclusion is based on evidence and material and evidence based on surmises and conjectures ?

(2) Whether the expenditure of Rs. 17,24,480 incurred in maintaining "Hotel Imperial" in good conditions is partly capital (one-fourth) and partly revenue (three-fourth) when neither the capacity of the hotel nor new items are added to such hotel ?

(3) Whether the Tribunal is justified in holding that one-fourth of the total expenditure of Rs. 17,24,480 on keeping the hotel in good conditions, represented capital expenditure ?"

2. The petitioner had taken on lease a building and was carrying on business under the name and style of "Hotel Imperial". The petitioner incurred expenses in repairing and renovating the said premises and claimed the amount of Rs. 17,24,480 which it had spent, as revenue deduction. The Income Tax Officer regarded a part of the expense which had been incurred, namely, about one-

fourth, as capital expenditure and disallowed the same. The assessed then went up in appeal before the Commissioner of Income Tax Appellate Tribunal failed and after the dismissal of the application u/s 256(1), the present petition has been filed.

3. It has been strenuously contended by learned counsel for the petitioner, while relying upon the case of *Installment Supply P. Ltd. Vs. Commissioner of Income Tax, Delhi-II*, , that such an expense which is incurred by a tenant of a building which it has taken on rent amounts to a revenue expenditure and not a capital expenditure. According to learned counsel, no asset of an enduring nature came into existence and the expense was incurred wholly and exclusively for the purpose of the assessed's business.

4. In our opinion, the aforesaid decision of this court is not applicable. In *Installment Supply P. Ltd. Vs. Commissioner of Income Tax, Delhi-II*, , this court was concerned with the assessment for the assessment year 1965-66. In the present case, however, the provisions of section 32(1A) are applicable. The said provisions reads as under :-

"Where the business or profession is carried on in a building not owned by the assessed but in respect of which the assessed holds a lease or other right of occupancy and any capital expenditure is incurred by the assessed for the purposes of the business or profession after the 31st day of March, 1970, on the construction of any structure or doing of any work in or in relation to, and by way of renovation or extension of, or improvement to, the building then, in respect of depreciation of such structure or work, the following deductions shall, subject to the provisions of section 34, be allowed -

(i) such percentage on the written down value of the structure or work as may in any case or class of cases be prescribed;

(ii) in the case of any such structure or work which is sold, discarded, demolished, destroyed or is surrendered as a result of the determination of the lease or other right of occupancy in respect of the building in the previous year (other than the previous year in which it is constructed or done) the amount by which the moneys payable in respect of such structure or work together with the amount of scrap value, if any, fall short of the written down value thereof :

Provided that such deficiency is actually written off in the books of the assessed."

5. It is clear from a bare perusal of the aforesaid provision that, on any expenditure which is incurred by a tenant which is in the nature of a capital expenditure, depreciation will be allowed. The said provision further indicates that construction of any structure or doing of any work in or in relation to or in any way renovating or extending or improving the building would be regarded as a capital expenditure. In the present case, the authorities have come to the conclusion that one-fourth of the total expenditure of Rs. 17,24,480 is in the nature of a capital expenditure. The extent to which the expenditure is of a

capital nature, namely, which is in the category which comes within the provisions of section 32(1A), is a pure question of fact and, in our opinion, the Tribunal was right in coming to the conclusion that no question of law arose. It has been pointed out that some of the repairs and renovations were quite extensive and were in the nature of capital expenditure.

6. For the aforesaid reasons, we find no merit in this petition and the same is dismissed. No costs.