

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 3611 OF 2010

The Commissioner of Income Tax-3 ..Appellant

Vs.

M/s Reliance Industrial Infrastructure Ltd. ..Respondent

....

Mr. A.R. Malhotra, Advocate for Appellant.

Mr. J.D. Mistri, Senior Advocate a/w P.C. Tripathi, Advocate i/b Raj Darak for Respondent.

....

**CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.**

DATED : 17 AUGUST 2015

P.C.:

This appeal challenges the impugned order dated 12 March 2007 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The appeal relates to the Assessment Year 1999-00.

2. The following questions of law are raised for our consideration:

“(A) Whether in the facts and circumstances of the case and in law, the Tribunal was right in holding that the assessee was engaged in the

business of letting out assets on hire and upholding CIT(A)'s order allowing higher rate of depreciation @ 40%?

(B) Whether in the facts and circumstances of the case and in law the Tribunal was right in dismissing Revenue's ground of appeal no.2 holding that the lease equalization credited to P&L Account over and above the lease rental cannot be considered as income and thereby upholding reducing of assessee's total income by lease equalization of Rs.2,06,21,580/-, credited to P&L Account?

(C) Whether in the facts and circumstances of the case and in law, the Tribunal was right in allowing entire expenditure of Rs.23,42,560/- incurred on stamp duty paid for acquisition of leasehold land for 30 years, as revenue expenditure?"

3. Regarding Question A:

The learned Counsel for the parties are agreed that the issue arising herein stands covered against the appellant-revenue and in favour of the respondent-assessee. This by the decision of this Court in Income Tax Appeal No. 2330/2010 in respect of the

same respondent-assessee decided on 17 June 2012 filed by the revenue against the same respondent-assessee. In view of the above, Question (A) does not give rise to any substantial question of law and hence not entertained.

4. Regarding Question B:

(a) The respondent-assessee had in the subject assessment year, in its computation of income reduced lease equalization amount of Rs.2.6 crores after having credited the same to its Profit and Loss Account. The respondent-assessee carried out the above exercise to be in accord with the Guidance Note issued by the Chartered Accountants of India. The Assessing Officer in the assessment order held that the above method adopted by the respondent-assessee in respect of lease equalization fund as per the Guidance Note on Accounting for Leases issued by Institute of Chartered Accountants of India is not acceptable as the same is not mandatory. It is further recorded in the order that the lease rent received is being credited in the books as per the lease agreement. This further credit of the lease acquisition fund according to the

Assessing Officer could not be allowed to be deducted while computing the income subject to tax.

(b) In appeal, the CIT(A) after considering the submissions interalia records that the Assessing Officer has misunderstood the claim of the respondent with regard to the lease equalization fund. It records that the lease equalization fund is merely a book adjustment entry. It also reiterate that lease rent received by the respondent-assessee has been credited to the Profit and Loss Account and offered to tax. The further credit of the lease equalization fund in the Profit and Loss Account in accordance with the accounting guidelines prescribed by the Institute of Chartered Accountants of India was only for the purposes of meeting with requirements of accounting standards and reflected the value of the assets in the books corresponding to the period of time it takes to write off the assets completely. Thus the CIT(A) allowed the respondent-assessee's claim/appeal.

(c) On further appeal by the revenue, the Tribunal in the impugned order upheld the order of the CIT(A). It held that in the

earlier years the debit claim for lease equalization fund was not allowed as an expenditure while computing the income chargeable to tax. Therefore on the principle of consistency the Tribunal took a view that when debits on account of lease equalization fund was not allowed as expenditure to arrive at the taxable profits the same cannot be included in determining the taxable income.

(d) The grievance of the revenue with regard to the impugned order of the Tribunal is that there is nothing on record to indicate that in the earlier years, the authorities had not allowed the debit of the lease equalization fund in the Profit and Loss Account as an expenditure. It could be a case where an assessee may not have made a claim for the same and thus there was no reason for the authorities under the Act not to examine the issue and disallow the deduction made while computing the taxable issues in the subject assessment year. Further it is contended that Guidance Note of the Institute of Chartered Accountants of India being relied upon by the respondent-assessee has not been notified by the Central Government under Section 145(2) of the Act. According to the revenue, this is a question which requires consideration.

(e) So far as the submission on behalf of the revenue is concerned, nothing has been shown to us to indicate that the finding of fact recorded by the Tribunal about the practice in the earlier assessment years is incorrect. In fact no such ground is taken in appeal. Be that as it may, on merits we find that the Assessing Officer has completely misunderstood the claim of the respondent-assessee in respect of the lease equalization fund. It is not disputed even by the Assessing Officer that the lease rent which has been received by the respondent/assessee has been offered to tax. This lease equalization fund is a mere book entry made to comply with the Guidance Note issued by the Institute of Chartered Accountants of India so as to meet the Accounting Standards. Further even if one accepts the submission on behalf of the revenue that these guidelines have not been notified by the Central Government for under Section 145(2) of the Act and thus cannot be accepted yet what follows is that the amount credited as a lease equalization fund to Profit and Loss Account has to be ignored as it is not real income. It is an amount which is completely notional and brought into the books only for complying with accounting standards and

has no relevance to determine the amount of net income chargeable to tax. In that view of the matter, the respondent-assessee was completely justified in reducing the amount of Rs.2.06 crores credited to the Profit and Loss Account as lease equalization fund for the purposes of determining the income chargeable to tax. In these circumstances, we find that Question (B) does not give rise to any substantial question of law for our consideration. Hence no admitted.

5. Regarding Question (C):

(a) The respondent-assessee has taken a land on lease for a period of 30 years. An amount of Rs.23.31 lacs was paid as stamp duty in respect of the deed of lease executed by the respondent with its lessor viz. JNPT. The respondent-assessee treated the same as revenue expenditure as according to it this expenditure was incurred for the purpose of carrying on business. The Assessing Officer did not in principle dispute that it is a revenue expenditure. However he held that the stamp duty paid for lease of assets should be spread over the entire life of the lease i.e. 30 years as differed revenue expenditure.

(b) In appeal, the CIT(A) held that the view of the Assessing Officer that the stamp duty paid on lease documents should be treated as differed revenue expenditure is not correct. However the CIT(A) also did not accept the respondent-assessee's contention that the expenditure is of the revenue nature. In his view, the stamp duty had been paid on the lease deed was to acquire a capital asset. Therefore the stamp duty paid on the document to acquire the leasehold right of land/asset should be disallowed in its entirety being on capital account.

(c) Being aggrieved, the respondent-assessee carried the issue further in appeal to the Tribunal. The Tribunal by the impugned order held that the payment of stamp duty towards the leasehold land is allowable as revenue expenditure in view of binding decision of this Court in *CIT Vs. Hoechst Pharmaceuticals Ltd.*¹, *CIT Vs. Cinecita (P.) Ltd.*² and *Richardson Hindustan Ltd. Vs. CIT*³. Accordingly the impugned order allowed the amount paid towards stamp duty of Rs.23.42 lacs as revenue expenditure in its entirety for the subject Assessment Year.

1 113 ITR 877

2 137 ITR 652

3 169 ITR 516

(d) The grievance of the revenue as formulated in question framed is that the entire expenditure of Rs.23.42 lacs on stamp duty could not be allowed as revenue expenditure in the subject assessment year. It supports the order of the Assessing Officer.

(e) We find that the CIT(A) had categorically given a finding that the Assessing Officer was not correct in holding that the expenses on account of stamp duty should be allowed as differed revenue expenditure. The revenue did not file any appeal against the aforesaid finding nor it made any claim of the stamp duty expenditure being allowed as differed revenue expenditure before the Tribunal. In fact during the hearing before the Tribunal, the only issue which appears to have been in dispute was whether the amount of Rs.23.42 lacs paid as a stamp duty to take land on lease is a capital expenditure or revenue expenditure. On the aforesaid facts, the Tribunal by the impugned order placed reliance upon the decisions of this Court, particularly in *Cincita Pvt. Ltd.* wherein it has been observed that the period of lease for which the property has been taken, cannot be regarded as a decisive test to determine the nature of the expenditure. In any case, it is not disputed before

us that the stamp duty amount has been paid on the lease deed for the purposes of carrying on assessee's business. Once the aforesaid position is accepted then the amount of stamp duty paid for has to be allowed as revenue nature.

(f) Before closing, we may point out that Mr. Malhotra, the learned Counsel appearing for revenue emphatically urged that the amount of Rs.23.42 lacs incurred on stamp duty for acquisition of leasehold land is to be allowed as differed revenue expenditure as held by the Assessing Officer. This on the ground that the benefit of leasehold land would be enjoyed by respondent-assessee for a period of 30 years. We do not accept the aforesaid submission for reasons more than one. Firstly the CIT(A) has very categorically taken a view that the Assessing Officer was incorrect in holding that the expenditure of Rs.23.42 lacs on stamp duty is to be allowed as differed revenue expenditure. The revenue did not challenge the above finding in appeal. Before the Tribunal, the only contention urged was that the amount cannot be allowed as revenue expenditure and the revenue supported the order of CIT(A) that amount of Rs.23.42 lacs paid as stamp duty is in fact a capital

expenditure. Therefore the revenue having once accepted the CIT(A)'s finding that the expenditure on stamp duty cannot be considered to be differed revenue expenditure, it is not open to the revenue to now urge a new ground. The second reason is, as pointed out by the learned Counsel for the respondent-assessee is found in the binding decision of the Apex Court in *Taparia Tools Ltd. Vs. Joint Commissioner of Income Tax*⁴ wherein it has been held that there is no concept of differed revenue expenditure unless so specified in the Act. The Apex Court in *Taparia Tools Ltd.* observed as under:

“13. The High Court has also observed that it was a case of deferred interest option. Here again we do not agree with the High Court. It has been explained in various judgments that there is no concept of differed revenue expenditure in the Act except under the specified section i.e. where amortisation is specifically provided, such as Section 35D of the Act.

14 to 16

17. What follows from the above is that normally the ordinary rule is to be applied, namely, revenue expenditure incurred in a particular year is to be allowed in that year. Thus, if the assessee claims that expenditure

⁴ 372 ITR 605

in that year, the Income-tax Department cannot deny the same. However, in those cases where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of “matching concept” is satisfied, which up to now has been restricted to the cases of debentures.”

Therefore on both the aforesaid grounds, the contention of Mr. Malhotra, the learned Counsel for the revenue is not found acceptable. Therefore Question (C) also does not give rise to any substantial question of law.

6. Accordingly, appeal is dismissed. No order as to costs.

[N.M. JAMDAR, J]

[M.S. SANKLECHA, J.]