THE HONOURABLE SRI JUSTICE SUJOY PAUL

AND

THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO

INCOME TAX TRIBUNAL APPEAL NO.87 OF 2008

JUDGMENT: *(per Hon'ble Sri Justice Namavarapu Rajeshwar Rao)*

The present appeal has been filed under section 260-A of the Income Tax Act, 1961 (for short the "Act") aggrieved by the order passed by Income Tax Appellate Tribunal, Hyderabad Bench-B, Hyderabad (for short "Tribunal") in I.T.A. No.909/Hyd/2004, dated 28.09.2007 for the Assessment Year 2001-2002.

2. We have heard the learned counsel Sri G.V.S. Ganesh, learned counsel for the appellant, and Sri J.V. Prasad, learned Senior Standing Counsel for the respondent.

3. The brief facts leading to filing of the present appeal are as under:

4. The appellant is running a 5-Star Hotel in Hyderabad. In the relevant Assessment years, the appellant claimed expenditure of Rs.9,21,033/- towards the cost of carpets, mattresses and lamp shades under Section 31 of the Act. The Assessing Officer (for short "AO") disallowed the claim of expenditure under Section 31 of the Act on the ground that

since the appellant purchased new carpets, mattresses and lamp shades without repairing the existing assets, the expenditure in question did not constitute "current repairs", applying the decision of the Supreme Court in the case of ***Ballimal Naval Kishore and another V. CIT[1].*** The AO also did not accept the alternate contention of allowing the amount mentioned above under Section 37(1) of the Act on the ground that the same was in the nature of capital expenditure.

5. The order of the AO was assailed before the Commissioner of Income Tax (Appeal) (for short, 'the CIT(A). The CIT(A) reversed the order of the AO and allowed deduction for the expenditure incurred under Section 37(1) of the Act on the ground that the Appellant incurred expenditure for replacement of damaged items and not for acquisition of an asset for the first time. The CIT (A) accordingly, held that the expenditure was not incurred for bringing into existence an asset of enduring nature.

6. On further appeal by the Revenue, the Tribunal reversed the order of the CIT(A) and held that the expenditure in question was not in the nature of current repairs allowable deduction under Section 31(i) of the Act, in view of the Supreme

[1] 224 ITR 414

Court judgment in the case of ***CIT V. Saravana Spinning Mills (P) Ltd.,***[2]

7. Aggrieved by the order of the Tribunal, dated 28.09.2007, the present appeal is filed by the appellant.

8. This Court, while hearing the matter, framed the following substantial questions of law:

1. Whether on the facts and circumstances of the case, the Tribunal erred in law in not holding that the expenditure on the purchase of carpets, mattresses and lamp shades was deductible under Section 37 (1) of the Act, not being in the nature of capital expenditure?

2. Whether on the facts and circumstances of the case, the Tribunal erred in law in not adjudicating the alternate claim for deduction under Section 37(1) of the Act?"

9. Learned counsel for the appellant contended that the Tribunal erred in law in not adjudicating the alternate claim for deduction under Section 37(1) of the Act. He further submitted that the Tribunal erred in law by not holding that the expenditure on the purchase of carpets, mattresses and lamp shades was deductible under Section 37(1) of the Act, not being in the nature of capital expenditure.

10. Learned counsel for the appellant contended that the order passed by the Tribunal declining to admit the alternate claim for deduction under Section 37(1) of the Act is contrary to

[2] (2007) 293 ITR 201

the judgment in the case of ***Saravana Spinning Mills (P) Ltd.*** (supra) applied by the Tribunal against the Appellant. The Supreme Court, in that case, did not consider the applicability of Section 37(1) of the Act and did not express any opinion thereon, as is evident from the observations on pages 212-213 of the judgment, which are reproduced hereunder.

> *"14. Some of the decisions cited on behalf of the Appellants we not being discussed by us as they deal with cases falling under Section 37. That Section is a residuary Section. Under Section 37, a particular item of expenditure may be deductible if the expenditure does not fall within Sections 30 to 36; that it should have been incurred in the accounting year; that it should be in respect of a business carried on by the Appellant, that it should not be on personal account of the Appellant, that it should not be in the nature of capital expenditure and that it should be spent wholly and exclusively for business. Whether expenditure is 'revenue' or 'capital in nature' would depend upon several factors, namely, nature of the expenditure, nature of the business activity etc. For example, construction of the building for self-use may be capital in nature whereas in the hands of the builder a building constitutes his stock-in-trade and, therefore, on the sale of the building the expenditure has to be revenue. Therefore, the builder would be entitled to deduct such expenditure from the sale proceeds/gross income. Therefore, whether an expenditure is revenue or capital in nature would depend on the facts of each case.*

11. Learned counsel for the appellant further contended that the Tribunal has referred to the later part of the judgment of the Supreme Court wherein the issue regarding the applicability of Section 37(1) of the Act was not allowed to be

raised in view of the concurrent finding recorded by the CIT(A), the Tribunal and High Court (in that case) that since the expenditure was revenue, it constituted "current repairs". The Appellant had not at any earlier stage claimed the expenditure allowable under Section 37(1) of the Act. In that view of the matter, the Supreme Court did not permit such belated contention to be raised. In those circumstances that the alternate claim was not entertained at the threshold. The said judgment did not decide the applicability of Section 37(1) of the Act with respect to expenditure incurred on repairs, in the aforesaid peculiar circumstances. At the same time, said judgment cannot be read as laying down a bar for entertaining of an alternate claim for deduction by the Tribunal.

12. *Per contra*, learned counsel for the respondent submitted that the order passed by the Tribunal is proper and the Tribunal has recorded cogent reasons while setting-aside the order of the Appellate Commissioner and does not warrant interference by this Court. The learned counsel for the respondent referred to reasons recorded by the Tribunal at paragraph-6 of the order, particularly the relevant portion which is as under:-

> *"The CIT(A) has directed the AO to allow the claim of the Appellant under sec. 37(1) of the Income-tax Act. Now, we have to examine whether when the Appellant specifically claimed the expenditure under sec. 31(i) of*

the Income-tax Act, the CIT(A) can direct the AO to allow the same under sec. 37(1). This issue was examined by the Apex Court in the case of Saravana Spinning Mills Ltd. (supra). The Apex Court, after referring to the provisions of Sections 31(i) and 37(1), observed as follows at paragraph 15 of the judgment:

"15. Before concluding, one aspect needs to be discussed. It was submitted on behalf of the Appellants, in the present case, that although the Appellants had claimed deduction under Section 31(i), they should be permitted to claim deduction under Section 37(1) as on facts it has been held by CIT(A), Tribunal and the High Court that the expenditure was revenue in nature. We find no merit in this contention. As stated above, even if the expenditure incurred is revenue in nature, still it may not fall in the connotation of the words "current repairs" under Section 31(i) which test has not kept in mind. As held by Chagla C.J. in the case of New Shorrock Spinning and Manufacturing Co. (supra) all repairs do not attract Section 31(i) even though the expenditure is revenue in nature. Therefore, the basic test, which had not been applied, in the present case, by CIT(A), Tribunal and the High Court, is whether the expenditure came within the expression "current repairs". Instead all the three authorities proceeded on the footing that since the expenditure was revenue it constituted "current repairs". It is for this reason that we have interfered with the concurrent findings given by CIT(A), Tribunal and the High Court."

13. Learned counsel for the appellant further contended that the claim of expenditure of Rs.9,21,033/- towards the cost of carpets, mattresses and lamp shades under Section 31 of the Act is justified, and he relied upon the judgment of the Supreme Court in the case of ***Commissioner of Income-Tax V. Lake Palace Hotels and Motels P. Ltd.,***[3] where the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur, has under Section 256(1) of the Income-tax Act, 1961, referred the following question of law for the opinion of the Supreme Court:

[3] (2002) 258 ITR 562

> *"Whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in holding that the sum of Rs.5,30,503/- incurred on old wing of the hotel building owned by the assessee was not a capital expenditure."*

14. Learned counsel for the appellant also relied upon the judgment of the Supreme Court in the case of ***Commissioner of Income Tax, Madras V. Mahalakshmi Textile Mills Ltd.,***[4] Wherein it was dealt with the expenditure as a permissible allowance in the computation of the assessee's taxable income.

15. Learned counsel for the appellant also relied upon the judgment of the Supreme Court in the case of ***Commissioner of Income-tax, Madurai V. Saravana Spg. Mills (P) Ltd.,***[5] wherein it was dealt with a particular item of expenditure may be deductible if the expenditure does not fall within sections 30 to 36. Whether expenditure is "revenue" or "capital in nature."

16. Learned counsel for the appellant also relied upon the judgment of the Supreme Court in the case of ***Commissioner of Income-tax, Vidarbha V. Smt. Godavari Devi Saraf***[6] wherein it was dealt with section 140A(3) was non-existent, the order of penalty there under cannot be imposed by the authority under the Act. Until a contrary decision is given by any other competent High Court.

---

[4] (1967) 66 ITR 710
[5] (2007) 163 Taxman 201 (SC)
[6] 1977 SCC OnlLine Bom 215

17. Learned counsel for the respondent relied upon the judgment of the Supreme Court in the case of ***Ballimal Naval Kishore and another V. Commissioner of Income Tax***[7] wherein it was dealt with – whether current repairs come under capital expenditure or not.

18. Learned counsel for the respondent also relied upon the judgment of the Delhi Court in the case of ***Ashoka Hotels Ltd., V. Commissioner of Income Tax, New Delhi***[8] wherein it was dealt with – Hotel business – Initial issue of Linen, Blankets and Uniforms – Expenses whether allowable for deduction or not. Those expenses were treated as written off and consumed at the time they were issued for actual use from the store to the rooms of the employees and not at the time when they were purchased or replaced. The expenses thus incurred were claimed as revenue expenditure. The Income Tax Officer rejected the claim on the ground that the expenses were of a capital nature.

19. Learned counsel for the respondent also relied upon the judgment of the Andhra Pradesh High Court in the case of ***Sri Rama Talkies V. Commissioner of Income Tax, Andhra***

[7] (1997) 224 ITR 414 (SC) dt.10.01.1997
[8] (1969) 72 ITR 306 dt. 12.08.1968

Pradesh [9] wherein it was dealt with whether the expenses incurred is allowable as a revenue expenditure or not.

20. Learned counsel for the respondent also relied upon the judgment of the Supreme Court in ***Assam Bengal Cement Co. Ltd., V. Commissioner of Income Tax, West Bengal*** [10] wherein it was dealt with that the expenses comes under capital expenditure.

FINDINGS OF THE COURT:

21. This Court analyses whether the appellant's expenditure comes under current expenditure or capital in nature. Before going into the said aspect, it is essential to know about the current repairs and capital expenditure. Current repairs means, repairs undertaken in the user's normal course preservation, maintenance or proper utilization or for restoring it to its original condition. A capital expenditure is the purchase of long-term physical or fixed assets used in a business's operations.

22. In ***Lake Palace Hotels and Motels P. Ltd.,*** (3rd supra), the question of law raised by the Rajasthan High Court is whether, on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was justified in holding that the

---

9 **AIR 1966 AP 187 Dt. 25.11.1964**

10 **1955 AIR 89, dt.11.11.1954**

sum of Rs.5,30,503/- incurred on the old wing of the hotel building owned by the assessee was not a capital expenditure? In this case also, the expenditure incurred by the assessee is also reflecting four handmade woolen carpets for Rs.2,24,280/-, eight room mattresses for Rs.5,366/- and lamp shades for Rs.11,950/-. At para No.8, the Supreme Court observed as under:

> *"8. The Supreme Court in Bombay Steam Navigation Co. (1953) Pvt. Ltd. v. CIT [1965] 56 ITR 52 has held that an expenditure made under a transaction which is so closely related to the business that it could be viewed as an integral part of the conduct of the business, may be regarded as revenue expenditure laid out wholly and exclusively for the purposes of the business. It is contended by Mr. Bhandawat that the decision of the Delhi High Court in Ashoka Hotels Ltd. v. CIT, [1969] 72 ITR 306, is more close to the facts of the instant case. We have carefully read the judgment in Ashoka Hotels Ltd.'s case, [1969] 72 ITR 306(Delhi). In that case, the assessee who owned a luxury hotel, purchased linen and blankets for use in the rooms of the hotel and the uniforms for its employees for the first time at or before the commencement of the hotel business. The court found that the expenditure was incurred by the assessee on linen and blanket and uniforms for its employees as a part of the initial equipment of the hotel and that a five star modern hotel cannot be said to be fully equipped without the linen, blankets and uniforms which form an Integral part of the income earning apparatus. The case is clearly distinguishable on facts. In the instant case because of the order placed to accommodate the guests in the Foreign Ministers' Conference of international level purchasing was made of carpets, mattresses, folding tables, lamp shades, etc., by no stretch of imagination can such items be said to be durable. Such expenses cannot be treated as capital expenditure. In fact the decision of the Madras High*

Court in CIT v. Dasaprakash, (1978) 114 ITR 210 is more close to the facts of the instant case. In the said case the assessee was carrying on the business of running a hotel. The assessee made an expenditure in a sum of Rs.37,390/- on various items like fixing carpets in the reception hall, replacement of old and worn-out hinges, putting frosted glass in the Pink hall, putting decorated mirrors and pictures of religious personages in the dinning-cum-lecture hall, etc. The court held that the expenditure was incurred with a view to beautify the premises to attract guests. Thus, the expenses cannot said to be of enduring nature. The question whether the expenditure was capital or revenue in the particular facts acts of the case is laid down in a large number of judicial decisions by the apex court and different High Courts. However, we are of the view that ordinarily it is essentially a question of fact. The law which the apex court laid down In Assam Bengal Cement Co. Ltd. v. CIT, (1988) 27 ITR 34 still holds good, which is extracted as follows:

"The aim and object of the expenditure would determine its character, namely, whether it was capital expenditure or revenue expenditure. If the expenditure was made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business, it was properly attributable to capital and was of the nature of capital expenditure. If, on the other hand, it was made for running the business or working it with a view to produce profits, it was revenue expenditure."

23. Whether the expenditure comes under capital expenditure or the current expenditure, in the above decision, the assessee was carrying on the business of running a hotel. The assessee made an expenditure in the sum of Rs.37,390/- on various items like fixing carpets in the reception hall, replacing old and worn-out hinges, putting frosted glass in the Pink hall, putting decorated mirrors and

pictures of religious personages in the dinning-cum-lecture hall, etc. The court held that the expenditure was incurred with a view to beautify the premises to attract guests. Thus, the expenses cannot said to be of enduring nature. The question whether the expenditure was capital or revenue in the particular facts acts of the case is laid down in a large number of judicial decisions by the apex court and different High Courts. However, we are of the view that ordinarily it is essentially a question of fact.

In the present case also, the assessee is running a Hotel, and he incurred expenditure for the replacement of carpets, mattresses and lampshades and the said expenditure comes only under current expenditure and not a capital expenditure.

24. In ***Mahalakshmi Textile Mills Ltd.,*** (4th supra) the Supreme Court held as follows:

> *The subject-matter of the of the assessee to claim allowance for Rs.93,215. Whether the allowance was admissible under one head or the other of sub-section (2) of Section 10, the subject-matter for the appeal remained the same, and the Tribunal having held that the expenditure incurred fell within the terms of Section 10(2)(v), though not under Section 10(2) (vi-b), it had jurisdiction to admit that expenditure as a permissible allowance in the computation of the taxable income of the assessee.*

The above said discussion goes to show that the expenditure incurred comes within the terms of Section 10(2)(v), though not under Section 10(2) (vi-b).

25. In ***Saravana Spg. Mills (P) Ltd.,*** (5th supra) the Supreme Court held as follows:

> *"14. Some of the decisions cited on behalf of the assessee's are not being discussed by us as they deal with cases falling under section 37. That section is a residuary section. Under section 37, a particular item of expenditure may be deductible if the expenditure does not fall within sections 30 to 36, that it should have been incurred in the accounting year, that it should be in respect of a business carried on by the assessec, that it should not be on personal account of the assessee: that it should not be in the nature of capital expenditure and that it should be spent wholly and exclusively for business. Whether expenditure is 'revenue or capital in nature would depend upon several factors, namely, nature of the expenditure, nature of the business activity etc. For example, construction of the building for self use may be capital in nature whereas in the hands of the builder a building constitutes his stock-in-trade and therefore, on the sale of the building the expenditure has to be revenue. Therefore, the builder would be entitled to deduct such expenditure from the sale proceeds gross income. Therefore, whether an expenditure is revenue or capital in nature would depend on the facts of each case. We do not wish to express any opinion on the applicability of section 37(1) in the present case. There were certain civil appeals wrongly tagged with the present batch which will be decided separately by us as they concern with section 37(1). Hence we do not wish to express any opinion on applicability of section 37(1).*
>
> *15. Before concluding, one aspect needs to be discussed. It was submitted on behalf of the assessee's, in the present case, that although the assessee's had claimed deduction under section*

> *31(i), they should be permitted to claim deduction under section 37(1) as on facts it has been held by CIT(A), Tribunal and the High Court that the expenditure was revenue in nature. We find no merit in this contention. As stated above, even if the expenditure incurred is revenue in nature, still it may not fall in the connotation of the words "current repairs" under section 31(i) which test has not kept in mind. As held by Chagla, C.J. in the case of New Shorrock Spg & Mfg. Co. Ltd. (supra) all repairs do not attract section 31(i) even though the expenditure is revenue in nature. Therefore, the basic test, which had not been applied, in the present case, by CIT(A). Tribunal and the High Court, is whether the expenditure came within the expression "current repair". Instead all the three authorities proceeded on the footing that since the expenditure was revenue it constituted "current repairs". It is for this reason that we have interfered with the concurrent findings given by CIT(A) Tribunal and the High Court.*

In the above said cases, the Apex Court discussed whether the expenditure is revenue or capital in nature, would depend on the several factors i.e. nature of expenses, nature of business activity. For example, the construction of the building for self-use may be capital in nature, whereas in the hands of the builder, a building constitutes his stock-in-trade and therefore, on the sale of the building, the expenditure has to be revenue.

26. In the present case, the assessee only incurred expenditure for replacing of carpets, mattresses and lamp shades as they were damaged. This expenditure comes under current expenditure but not capital expenses.

27. Per contra, learned counsel for the respondent/revenue relied upon the ***Ballimal Naval Kishore*** (7th supra) wherein the Apex Court held as under:

> *"The expression used in Section 10(2)(v) is "current repairs" and not mere "repairs". The same expression occurs in Section 30(a)(ii) and in Section 31(i) of the Income Tax Act, 1961. The question is what is the meaning of the expression in the context of Section 10(2). In New Shorrock Spinning and Manufacturing Company Ltd., Chagla,C.J., speaking for the Division Bench, observed that the expression "current repairs" means expenditure on buildings, machinery, plant or furniture which is not for the purpose of renewal or restoration but which is only for the purpose of preserving or maintaining an already existing asset and which does not bring a new asset into existence or does not give to the assessee a new or different advantage.*
>
> *"The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure or repairs what is really being done is to preserve and maintain an already existing asset. The object of the expenditure is not to bring a new asset into existence, nor is its object the obtaining of a new or fresh advantage. This can be the only definition of `repairs' because it is only by reason of this definition of repairs that the expenditure is a revenue expenditure.*
>
> *If the amount spent was for the purpose of bringing into existence a new asset or obtaining a new advantage, then obviously such an expenditure would not be an expenditure of a revenue nature but it would be a capital expenditure, and it is clear that the deduction which, the Legislature has permitted under Section 10(2)(v) is a deduction where the expenditure is a revenue expenditure and not a capital expenditure."*
>
> *In taking the above view, the Bombay High Court dissented from the view taken by the Allahabad*

High Court in Ramkrishan Sunderlal vs. Commissioner of Income Tax, U.P. [(1951) 19 I.T.R..324] where it was held that the expression "current repairs" in Section 10(2)(v) was restricted to petty repairs only which are carried out periodically. The Learned Judge agreed with the view taken by the Patna High Court in Commissioner of Income Tax vs. Darbhanga Sugar Co. Ltd. [(1956) 29 I.T.T.21] and by the Madras High Court in Commissioner of Income Tax vs. Sri Rama Sugar Mills Ltd. [(1951) 21 I.T.R.191] In Liberty Cinema vs. Commissioner of Income-Tax, Calcutta [52 I.T.R.153], P.B. Mukharji, J., speaking for a Division Bench of the Calcutta High Court, held that an expenditure incurred with a view to bring into existence a new asset or an advantage of enduring nature cannot qualify for deduction under Section 10(2)(v).

In our opinion the test involved by Chagla C.J. in New shorrock Spinning & Manufacturing Company Limited is the most appropriate one having regard to the context in which the said expression occurs. It has also been followed by a majority of the High Courts in India. We respectfully accept and adopt the test.

Applying the aforesaid test, if we look at the facts of this case, it will be evident that what the assessee did was not mere repairs but a total renovation of the theatre. New machinery, new furniture, new sanitary fittings and new electrical wiring were installed besides extensively repairing the structure of the building. By no stretch of imagination, can it be said that the said repairs qualify as "current repairs" within the meaning of Section 10(2)(v). It was a case of total renovation and has rightly been held by the High Court to be capital in nature. Indeed, the finding of the high Court is that as against the sum of Rs.17,000/- for which the assessee had purchased the factory in 1937, the expenditure incurred in the relevant accounting year was in the region of Rs.1,20,000/-."

28. In ***Ashoka Hotels Ltd.,***(8th supra), the Delhi High Court held as follows:

> *It also claimed an expense of Rs.1,96,931/- as the cost of uniforms of the employees. In the course of assessment proceedings it was explained that, according to the accounting practice followed by the assessee the blankets, linen and uniform were treated as written off and consumed at the time they were issued for actual use from the state to the rooms of the employees and not at the time when they were purchased or replaced. The expense thus incurred were claimed revenue expenditure deductible out of the income o the assessee. The Income Tax Officer rejected the claim on the ground that the expenses were of a capital nature as they related to the first year of the business.*
>
> *I shall first take up the question regarding the two sums of Rs.1,79,904/- representing expenditure on linen and blankets and Rs.1,96,931/- representing expenditure on uniforms. The facts undisputed and indisputable are that the linen, blankets and uniforms in question were purchased by the assessee for the first time on or before the commencement of its business. Instead of showing the expenditure incurred on the purchase of these articles as and when the purchases were actually made by it, the assessee adopted a method of accountancy whereby the blankets and linen were treated in its books as written off at the time of issue of those materials for actual use from the stock and not at the time when they were purchased. Likewise, the price of uniforms was also written off at the time when they were issued from stock to the employees as distinct from the time when they were purchased.*
>
> *Now the controversy as to whether a particular item of expenditure falls under one category or the other has come up before the courts in this country as well as in England in a variety of circumstances. As observed by the Supreme Court in Assam Bengal Cement Co. Ltd. v. Commissioner of Income-tax, the line of demarcation between the two types of expenditure is very thin and learned judges in this country as well as in England have from time to time pointed out the difficulties besetting the task of separating one from the other. Decided cases no doubt lay down certain broad tests which are intended to be working*

guides; but ultimately, as observed by Lord Macnaghten in Dovey Corey" there never has been, and I think there never will be, much difficulty in dealing with any particular case on its own facts and circumstances."

In the case of Assam Bengal Cement Co. Ltd. the Supreme Court reviewed the leading cases, Indian as well as English, and summarised the broad tests laid down therein.

It is, therefore, neither necessary nor desirable to attempt a fresh survey of those cases as the broad principles which should govern the decision of this case are no longer in doubt. It should, however, be borne in mind that, even after setting out those principles, their Lordships observed "These tests are thus mutually exclusive and have to be applied to the facts of each particular case in the manner above indicated. It has been rightly observed that in the great diversity of human affairs and the complicated nature of business operations it is difficult to lay down a test which would apply to all situations. One has, therefore, got to apply these criteria one after the other from the business point of view and come to the conclusion whether on a fair appreciation of the whole situation the expenditure incurred in a particular case is of the nature of capital expenditure or revenue expenditure in which latter event only it would be a deductible allowance under section 10(2)(xv) of the Income- tax Act. The question has all along been considered to be a question of fact to be determined by the income-tax authorities on an application of the broad principles laid down above and the courts of law would not ordinarily interfere with such findings of fact if they have been arrived at on a proper application of those principles." One of the principles laid down by their Lordships is that in cases where the expenditure is made for the initial outlay or for extension of a business or a substantial replacement of the equipment there can be no doubt that it is capital expenditure.

The above discussion shows that the expenditure incurred by the assessee for the total renovation but not for the existing one, and also, he incurred expenditure for extension of the business or substantial replacement of equipment. The

Apex Court observed that it is a capital expenditure. But, in the present case, there is no renovation of the Hotel and there is no substantial replacement of the equipment, it is only replacement of existing damaged carpets, mattresses and lamp shades. So, the expenditure incurred by the assessee comes only under current expenditure.

29. In the above case, the assessee incurred expenditure for initial outlay, extension of a business, or a substantial replacement of the equipment; there can be no doubt that it is capital expenditure. But, in the present case, it is not an initial outlay or for the extension of a business or a substantial replacement of the equipment, it is only the replacement of existing carpets, mattresses and lampshades. All these three items are in damaged condition, due to damage, they have been replaced with new one. The above said citation does not apply to the present set of facts. In the same case, with regard to whether the assess incurred expenditure comes under the revenue nature or capital in nature, the Delhi High Court held as follows:

> *"In the present case the Tribunal has found that expenditure was incurred by the assessee on linen, blankets and liveries of peons and bearers as a part of the initial equipment of the hotel. The Tribunal has also found, and in my opinion, rightly, that just as a modern hotel cannot be said to have been wholly equipped without its furniture and fixtures, etc., it cannot be said to be fully equipped without the*

linen, blankets and the uniforms which form an integral part of the income earning apparatus.

"In the case of a hotel it is not the building and certain fixtures only which constitute initial outlay. Items of furniture, curtains, crockery, cutlery, cooking utensils, linen, blankets and uniforms of stewards, peons and bearers, all form the essential initial equipment of a hotel, more so, in the case of a hotel which, according to the assessee's own claim, is a five star luxury hotel. The Tribunal is, therefore, right in holding that the expenditure incurred on the initial issue of linen, blankets and uniforms is expenditure on the initial equipment of the income earning apparatus and is, therefore, not a permissible deduction under Section 10(2)(xv) of the Act, being of a capital nature."

In the above discussion also, the expenditure incurred by the assessee is an initial expenditure to establish a Hotel. It is called initial equipment to run the Hotel. In the present case, the expenditure incurred by the assessee is only for replacement of existing carpets, mattresses and lamp shades. It is not an initial expenditure or for starting a business. So, the above decision is not applicable to the present set of facts. As such, the expenditure incurred by the assessee in the present comes under current expenditure but not capital expenditure.

30. In ***Sri Rama Talkies*** (9th supra) the Andhra Pradesh High Court held as follows:

"In respect of current repairs to such buildings, machinery, plant of furniture, the amount paid on account thereof.....

(xv) any expenditure (not being an allowance of the nature described in any of the clauses (i) to (xiv)

inclusive, and not being in the nature of capital expenditure or personal expenses of the assessee) laid out or expended wholly and exclusively for the purpose of such business, profession or vocation.

"We next consider whether the said items come under section 10(2)(xv). In order to attract sub-clause (xv), it must be established that the expenditure is not an allowable deduction coming in any of the clauses (i) to (xiv) and further it is not in the nature of capital expenditure or personal expenses of the assessee and was laid out wholly and exclusively for the purpose of business. The claim under sub-clause (v) being negatived, it may be safely held on the facts of the case that it does not fall within any of the sub-clauses (i) to (xiv). The only question that would remain is whether it is not an expenditure in the nature of a capital expenditure. If it be an expenditure of that nature, it is not an allowable deduction under sub-clause (xv) even though the expenditure may be wholly or exclusively laid out for the purposes of business. The expression "capital expenditure" of course is not defined in the Act. But, as observed by the Supreme Court in Pingle Industries Ltd. v. Commissioner of Income-tax, the distinction between capital and revenue expenditure is well recognised in income-tax law and is based on certain principles which are easy of application and which emerge from the various cases. A synthesis was attempted by the Full Bench of the Lahore High Court in Benarsidas Jagannath, where Mahajan J. (as he then was) summarised the position and the various tests which emerge. This summary was approved of by the Supreme Court in Assam Bengal Cement Co, Ltd. v. Commissioner of Income tax at page 43. Bhagwati J. there observed thus:

"In cases where the expenditure is made for the initial outlay for extension of a business or for a substantial replacement of the equipment there is no doubt that it is capital expenditure. A capital asset of the business is either acquired or extended or substantially replaced and that outlay whatever be its source whether it is drawn from the capital or the income of the concern is certainly in the nature of capital expenditure. The question however arises for

> *consideration where expenditure is incurred while the business is going on and is not incurred either for extension of the business or for the substantial replacement of its equipment. Such expenditure can be looked at either from the point of view of what is acquired or from the point of view of what is the source from which the expenditure is incurred. If the expenditure is made for acquiring or bringing into existence an asset or advantage for the enduring benefit of the business it is properly attributable to capital and is of the nature of capital expenditure."*

In the above said definition with regard to capital in nature and current expenditure, the expenditure is made for the initial outlay for extension of the business or for a substantial replacement of the equipment there is no doubt that it is capital expenditure. In the present case, there is no extension of business or for a substantial replacement of the equipment, it is only replacement of existing damaged carpets, mattresses and lamp shades.

31. In ***Assam Bengal Cement Co. Ltd.,***(10th supra) the Supreme Court held as follows:

> *"It is not easy to define the term 'capital expenditure' in the abstract or to lay down any general and satisfactory test to discriminate between a capital and a revenue expenditure. Nor is it easy to reconcile all the decisions that were cited before us for each case has been decided on its peculiar facts. Some broad principles can, however, be deduced from what the learned Judges have laid down from time to time. They are as follows:*
>
> *I. Outlay is deemed to be capital when it is made for the initiation of a business, for extension of a business, or for a substantial replacement of equipment: vide Lord Sands in Commissioners of*

Inland Revenue v. Granite City Steam ship Company'. In City of London Contract Corporation v. Styles, Bowen, L.J., observed as to the capital expenditure as follows:

"You do not use it "for the purpose of your concern, which means, for the purpose of carrying on your concern, but you use it to acquire the concern.

"2. Expenditure may be treated as properly attributable to capital when it is made not only once and for all, but with a view to bringing into existence an asset or an advantage for the enduring benefit of a trade: vide Viscount Cave, L.C., in Atherton v. British Insulated and Helsby Cables Ltd. If what is got rid of by a lump sum payment is an annual business expense chargeable against revenue, the lump sum payment should equally be regarded as a business expense, but if the lump sum payment brings in a capital asset, then that puts the business on another footing altogether. Thus, if labour saving machinery was acquired, the cost of such acquisition cannot be deducted out of the profits by claiming that it relieves the annual labour bill, the business has acquired a new asset, that is, machinery.

"The expressions 'enduring benefit' or 'of a permanent character' were introduced to make it clear that the asset or the right acquired must have enough durability to justify its being treated as a capital asset.

"3. Whether for the purpose of the expenditure, any capital was withdrawn, or, in other words, whether the object of incurring the expenditure was to employ what was taken in as capital of the business. Again, it is to be seen whether the expenditure incurred was part of the fixed capital of the business or part of its circulating capital. Fixed capital is what the owner turns to profit by keeping it in his own possession. Circulating or floating capital is what he makes profit of by parting with it or letting it change masters.

Circulating capital is capital which is turned over and in the process of being turned over yields profit or loss. Fixed capital, on the other hand, is not involved directly in that process and remains unaffected by it"

The expression "once and for all" is used to denote an expenditure which is made once and for all for procuring an enduring benefit to the business as distinguished from a recurring expenditure in the nature of operational expenses."

The above said discussion is with regard to expenditure incurred by the assessee is basing on the clause 4 of the deed of the lessor and it comes under deed of assessee. This again was the acquisition of an asset or advantage of an enduring nature for the whole of the business and was of the nature of capital expenditure and thus was not an allowable deduction under section 10 (2) (xv) of the Act. In the present case, the assessee spent amount not basing on any deed or any promise of the deed to run the business. It is only replacement of damaged carpets, mattresses and lamp shades. As such, the above case is also not applicable to the present set of facts.

32. In view of the above observations, this Court feels that the expenditure incurred by the assessee is only on replacement of the damaged items and also it is not for the first time or for expansion of the business. The replacement

of existing damaged carpets, mattresses and lamp shades does not come under the capital in nature but it comes only under current expenditure. This Court is convinced by the arguments of the learned counsel for the assessee, and the expenditure is allowable under Section 37(1) of the Income Tax Act. Accordingly, the substantial question No.1 is answered in favour of the assessee.

33. In view of our findings on the substantial question No.1, the substantial question No.2 does not arise.

34. For all the aforesaid reasons, we are of the firm view that the question of law framed by the Court, while admitting the appeal, deserves to be decided in the positive. Thus, the appeal deserves to be and is accordingly allowed by setting aside the impugned order of the Tribunal. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SUJOY PAUL,J

NAMAVARAPU RAJESHWAR RAO,J

Date:05.11.2024
Bdr.