

Gujarat High Court

Commissioner vs Unknown on 23 March, 2011

Author: Akil Kureshi,&NbspMs Gokani,&Nbsp

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TAXAP/1785/2009 4/ 4 ORDER

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX
APPEAL No. 1785 of 2009

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COMMISSIONER
OF INCOME TAX-I - Appellant(s)

Versus

M/S
MODI HOSPITAL - Opponent(s)

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Appearance
:
MRS
MAUNA M BHATT
for
Appellant
None for
Opponent

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CORAM

:

HONOURABLE

MR.JUSTICE AKIL KURESHI

and

HONOURABLE

MS JUSTICE SONIA GOKANI 23rd March 2011

ORAL
ORDER

(Per : HONOURABLE MR.JUSTICE AKIL KURESHI) Revenue challenges the judgment and order of the Tribunal dated 27th May 2008, raising following questions for our consideration :-

[A] "Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in upholding the decision of the Cit (A) to treat repairs on building as revenue expenditure, ignoring the facts that the said structure had already completed its life span as the building was 40 years old therefore renewal was long over due and also the building had suffered extensive damage as a result of earthquake and therefore the assessee had to make extensive renovation which effectively brought into existence a new asset with enduring benefit ?"

[B] "Whether on the facts and circumstances of the case, the Appellate Tribunal is right in law in upholding the decision of the CIT [A] to treat repairs on building as revenue expenditure overlooking the decision relied upon by the Assessing Officer in the case of Arvind Mills Limited 197 ITR 422(SC) and in the case of Modi Spinning & Weaving Mills & Company Limited [200 ITR 544] of the Delhi High Court ?"

We have perused the orders on record with the assistance of learned counsel for the revenue. From the record, it emerges that the assessee runs a hospital. Such hospital building received damage in the earthquake of 2001, requiring renovation. Assessee thereupon incurred expended Rs. 13,39,060/= for such repairs. The Assessing Officer disallowed deduction of such expenditure

treating it as capital in nature.

The issue was carried in appeal by the assessee before the CIT [A]. CIT [A] reversed the order of the Assessing Officer holding that the expenditure was only for repairs and not for renovation of the building and allowed the deduction, making following observations :-

"6. I have carefully considered the submission of the AR and the contentions of the Assessing Officer. It appears that the AO has largely been carried away by the amount of the expenses which is Rs. 13,39,060/=. He has apparently failed to appreciate that the nature of the expenses has to be compared with the size and the nature of the asset in question. His contention that an entirely new building came into existence is contrary to the nature of the expenses incurred. No new concrete super structure can come into existence without substantial expenses being incurred in steel and cement. In the appellant's case the bulk of the expenditure is incurred on changing of tiles, paints, plumbing, etc. The Hon'ble Gujarat High Court in the case of India Ginning & Pressing Co. Limited v/s CIT [252 ITR 577] held - " In determining whether an expenditure is of capital or revenue nature, what is material is to consider the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be dis allowable. If the advantage consists merely in facilitating the assessee's trading operations or enabling the management and conduct of the assessee's business to be carried on more efficiently or more profitably while leaving the fixed capital untouched, the expenditure would be on revenue account even though the advantage may endure for an indefinite future..." Applying the above ratio to the facts of the case it is amply clear that the expenditure incurred by the appellant has not resulted in creation of any new asset or any expansion of the profit earning apparatus. Merely because the quantum of expenditure appears to be high, it cannot be held capital. In my opinion, the said expenditure is clearly revenue in nature and allowable as deduction. Hence, the disallowance made by the AO is deleted."

Revenue carried the issue in further appeal before the Tribunal. The Tribunal relying on several decisions of this Court as well as other Courts, and in particular in the case of India Ginning & Pressing Company Limited v/s. CIT [252 ITR 577], rejected the Revenue's appeal, making following observations :-

"From the above decision of the Hon'ble Gujarat High Court has considered the decision of the Hon'ble Supreme Court relied upon by the Assessing Officer and held that whether the expenditure on repairs is capital or revenue in nature is to be decided by the nature of repairs. We find, in the present case, the facts on record shows tha the assessee was having a building, in which hospital was running. The said hospital building was repaired and no new construction of enduring nature has been made. The assessee is a hospital situated on a plot of nearly 8000 sqft. In the areas of Moti Tanki, Rajkot and the expenditure was incurred by the assessee was only on account of repairs only. Therefore, we are of the view that CIT [A] are justified in his action. Therefore, we do not interfere in the order of the CIT [A]. "

When we find that the CIT [A] as well as the Tribunal both have concurrently found that the expenses were incurred by the assessee not for renovation but for repairs, and when it was found

that such repairs were not so extensive enduring benefits to the assessee, the authorities treating such expenditure as revenue in nature, calls for no interference. We find that the issue has been dealt with by the Tribunal, based on the law laid down by this Court in similar cases. No question of law arises, the Tax Appeal is dismissed.

{Akil Kureshi, J.} {Ms.

Sonia Gokani, J.} Prakash* Top