

THE COMMISSIONER OF INCOME TAX, DELHI

v.

M/S HINDUSTAN TIMES LTD. NEW DELHI

MAY 6, 1998

[MRS. SUJATA V. MANOHAR AND M. JAGANNADHA RAO, JJ.]

*Income Tax Act, 1961 : Sections 32(1) and 256 (2).*

*Income Tax—Depreciation—Purchase of existing residential building by assessee—Wanted to use that building for commercial purposes—Assessee paid commercialisation charges in addition to ground rent—Original building demolished and a new multi-storeyed building constructed by assessee—Assessee paid Rs. 36,96,516 for using the multi-storeyed building for commercial purposes containing an area in excess of original built up area—Assessee added this amount to the cost of building constructed by it and claimed depreciation on the same—Claim allowed by Commissioner (Appeals) as well as by the Tribunal—View upheld by High Court on the ground that the sum of Rs. 36,96,516 has been laid out by the assessee in order to construct the additional space for office purposes—The payment has been made for construction of a business asset and forms a part of the cost incurred by the assessee in putting up that building—Appeal by Revenue—Held the view taken by the High Court was correct—The amount claimed by the assessee was includible in the cost of building for claiming depreciation.*

*Commissioner of Income-tax, Punjab, Jammu & Kashmir and Himachal Pradesh v. Alps Theatre, (1967) 65 ITR 377, held inapplicable.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1225-30 of 1990.

From the Judgment and Order dated 20.2.87 of the Delhi High Court in I.T. C. Nos. 72-73, 84, 191, 193-194 of 1986.

Dr. V. Gauri Shankar, S. Rajappa and B.K. Prasad for the Appellant.

Santosh K. Aggarwal and B.V. Desai for the Respondent.

The following Order of the Court was delivered :

A These appeals pertain to one of the questions considered by the High Court under Section 256(2) of the Income Tax Act, 1961 at the instance of the Revenue. The appeals pertain to assessment years 1973-74, 1974-75 and 1977-78 to 1980-81. The question as framed for the assessment years 1973-74, 1974-75 and 1977-78 was as follows:-

B “Whether, on the facts and in the circumstances of the case, the ITAT was justified in law in upholding the order of the CIT(A) on the ground that no injustice was caused to the revenue by the order passed by the CIT(A) in directing that the assessee was entitled to add a sum of Rs. 36,96,516 to the cost of building and claim depreciation thereon?”

C The question is not very happily worded. A similar question was also raised in respect of the other assessment years. The question basically is : Whether the assessee is entitled to depreciation in respect of a sum of Rs.36,96,516 which it claimed as part of the actual cost of construction of a building constructed by it for business purposes.

D The assessee had purchased an existing residential building bearing Nos. 18-20, Kasturba Gandhi Marg, New Delhi, in the year 1961. The assessee wanted to use that building for commercial purposes. For this purpose, it paid certain additional charges to the Development officer of the Government of India and also extra ground rent in respect of the land. The built-up area then existing on that plot was 51,198 square feet. A formal agreement was executed on 21.10.1962 in this connection. Under the said agreement, the assessee had *inter alia* paid a sum of Rs. 3,65,875 to the Land Development Officer, Government of India, as commercialisation charges in addition to the ground rent.

E In the year 1965-66, the original building was demolished and the assessee constructed a new multi-storeyed building on the said land. The construction was completed some time in the year 1973. The assessee applied to the Land & Development Officer, Government of India for using the building for commercial purposes. An indenture was executed between the President of India and the assessee on 5.3.1973. Clause (1) of the indenture is as follows:-

F “In pursuance of the said agreement and *in consideration of the sum of Rs. 36,96,516* (Rupees thirty six lakhs, ninety six thousand and five hundred sixteen only) *paid by the lessee to the lessor* as additional premium before the execution of these presents (the receipt thereof

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the lessor doth hereby admit and acknowledge) and of the additional ground rent reserved and of the covenants on the part of the lessee contained in the Principal Indenture, Supplemental Indenture and herein, *the lessor doth hereby grant his consent to the lessee using the multi-storeyed building under erection and construction on a part of the demised premises*, according to the plans sanctioned by New Delhi Municipal Committee vide its Resolution No. 30 dated 20th January, 1967, *save and except the built-up area of 51198 square feet therein, for commercial purposes* and the built-up area of 51198 square feet in the said multi-storeyed building only for the purpose mentioned in the Supplemental Indenture.”

(underlining ours)

The assessee thus paid a sum of Rs. 36,96,516 for using the multi-storeyed building for commercial purposes containing an area in excess of 51198 square feet.

The assessee added this amount of Rs.36,96,516 to the cost of the building constructed by it and claimed depreciation on the same for the assessment years in question. For the assessment years 1973-74 and 1974-75, the depreciation was duly allowed. However, the same has been re-opened and the depreciation so granted has been disallowed. Disallowance is for the relevant assessment years set out earlier. However, for the assessment years 1975-76 and 1976-77, depreciation has been granted as claimed by the assessee and no appeals have been filed from the orders so allowing depreciation.

In respect of the present assessment years, however, it is the contention of the Department that the amount of Rs.36,96,516 has been paid for commercial use of the land and hence it should be added to the cost of the land. The Department contends that adding this amount to the cost of the building for the purposes of depreciation, is not justified. The Commissioner (Appeals) as also the Tribunal, however, have come to the conclusion that the sum of Rs. 36,96,516 has been correctly added to the cost of the building constructed by the assessee because the amount has been paid in respect of the commercial use of the additional area constructed as a result of the multi-storeyed building being put up by the assessee. It, therefore, pertains to the building and not to land. The High Court has also come to a similar conclusion. The High Court has pointed out that the use of the land had already been converted to commercial use in 1962 when the assessee had paid an additional amount of Rs. 3,65,875 There was no question, therefore, of any additional

- A commercialisation of the said plot. The amount has, however, been paid for the additional construction which has been put up by the assessee and hence forms a part of the cost of the building. For the land, the assessee has paid additional ground rent under the said agreement of 5.3.1973, which is a separate amount. The High Court has, therefore, upheld the view taken by the
- B Tribunal that the sum of Rs. 36,96,516 has been laid out by the assessee in order to construct the additional space of 345144 square feet for office purposes. The payment has been made for construction of a business asset and forms a part of the cost incurred by the assessee in putting up that building. We agree with the view so taken by the High Court.
- C The Department has relied upon a decision of this Court in *Commissioner of Income-tax, Punjab, Jammu & Kashmir and Himachal Pradesh v. Alps Theatre*, (1967) 65 ITR 377, which makes a distinction between the cost of the land and the cost of the building and holds that depreciation can be allowed only on the cost of the building. The question before us, however, is different. It is whether, in the cost of the building, the amount in question should have
- D been included or not. Therefore, the decision in the above case has no bearing on the question which is before us.

The appeals are, therefore, dismissed with costs.

T.N.A.

Appeals dismissed.