

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 416 OF 2001**

RPG Enterprises Ltd.]
A Company Incorporated under the]
Companies Act, 1956 and having its]
Registered Office at Ceat Mahal, 463,]
Dr. Annie Besant Road,]
Worli, Mumbai – 400 025] .. Appellant

v/s.

Deputy Commissioner of Income Tax,]
Circle 5(6), Aayakar Bhavan,]
M.K. Road,]
New Marine Lines, Mumbai – 400 020] .. Respondent

Mr. B.V. Jhaveri a/w B.G. Yewale i/b Rajesh Shah for the appellant
None for the respondent

**CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.**

Judgment Reserved on : 23rd June, 2016.

Judgment Pronounced on : 29th June, 2016

Judgment : (Per M.S. Sanklecha, J.)

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) challenges the order dated 18th April, 2001 of the Income Tax Appellate Tribunal (Tribunal). The impugned order dated 18 April 2001 relates to A.Y. 1996-97.

2. On 30 July 2004 this appeal was admitted on the following

substantial question of law :-

“Whether on the facts and in the circumstances of the case and in law, Income Tax Appellate Tribunal was correct in holding that the expenditure to the extent of 75% of Rs.31,32,841/- was capital in nature?”

3. Brief facts leading to this appeal are as under :-

- (a) Since the year 1995, the appellant was in occupation as a tenant of 7th floor of Ceat Mahal, Worli, Mumbai(said premises). The appellant was paying a monthly rent of Rs.73,530/-. In the A.Y. 1996-97, the appellant filed its return of income declaring an income of Rs.17.46 lakhs. The appellant had debited a sum of Rs.47.63 lakhs to the Profit and Loss account under the head “Repairs and Maintenance” while determining its income. Out of the aforesaid amount of Rs.47.63 lakhs as expenditure, an amount of Rs.31.32 lakhs related to the said premises. The Assessing Officer on examination of the nature of expenses found that the same were substantially capital in nature i.e. renovating the said premises by doing civil work. However, some part of its expenditure were found to be revenue in nature, example plastering. Therefore, the Assessing officer attributed 75% of the expenditure claimed as capital and 25% as revenue i.e.

Rs.23.49 lakhs (capital expenditure) and Rs. 7.83 lakhs (revenue expenditure) aggregating to Rs.31.32 lakhs. The Assessing Officer allowed 10% depreciation i.e. Rs.2.34 lakhs on the capital expenditure of Rs.23.49 lakhs under Section 32 of the Act and an further amount of Rs. 7.83 lakhs as revenue expenditure. The aforesaid exercise resulted in the Assessing officer passing an order dated 18th July 1999 determining the appellant's income at Rs.41.25 lakhs.

- (b) Being aggrieved, the appellant carried the issue of repairs and maintenance, in appeal to the Commissioner of Income Tax (Appeal) [CIT(A)]. On consideration of the nature of expenditure incurred by the appellant, the CIT(A) held that substantial expenses incurred on the said premises was on account of major structural renovation. Thus, capital in nature. Therefore the CIT(A) by order dated 24th February 2000 upheld the Assessment order dated 18th July 2004 of the Assessing Officer disallowing the claim of Rs. 23.49 lakhs as Revenue expenditure.
- (c) Being aggrieved, the appellant carried the issue of nature of expenditure in appeal to the Tribunal. The impugned order of the Tribunal on facts found that substantially, the expenditure on

renovation gives a benefit or advantage of enduring nature. Therefore substantially on capital account qualifying for depreciation in terms of Explanation-I to Section 32 of the Act. In the circumstances, it upheld the order of the CIT(A), holding that the expenditure to the extent of Rs.23.49 lakhs out of Rs.31.32 lakhs is on capital account and cannot be allowed as revenue expenditure.

4. Being aggrieved, the appellant is in appeal and the appeal has been admitted on the above question of law. Mr. Jhaveri, learned Counsel appearing for the appellant in support submits as under :-

(a) The expenditure of Rs.31.32 lakhs claimed on account of repairs and maintenance of the said premises is allowable as revenue expenditure. This is no longer res integra in view of the decisions of this Court in *Commissioner of Income Tax Vs. Talathi and Panthaky Associated P. Ltd.* 343 ITR 309 and *Commissioner of Income Tax Vs. Hede Consultancy Pvt. Ltd. and Anr.* 250 ITR 350.

In the above cases, it is submitted that on an identical factual situation the expenditure on renovation of tenanted premises has been allowed as revenue expenditure under Section 37 of the Act;

(b) The expenditure of Rs. 31.32 lakhs incurred on renovation of the

said premises being repairs is allowable under Section 30 of the Act; and

(c) In any case there is no basis indicated for apportioning the expenditure in the ratio of 75% and 25% between capital and revenue account. Therefore, the finding of the authorities is not sustainable;

5. We find that the appellant was a tenant of the said premises. It was paying monthly rent of Rs.73,530/- from April, 1995 onwards under the agreement dated 15th February, 1995. Further the agreement provided that the cost of repairs and renovation i.e. civil, electrical, plumbing, polishing etc. would be carried out by the appellant at its own expenses after taking prior permission from the landlord. All the Authorities under the Act have rendered a finding of fact that the so called “repairs and maintenance” were in fact extensive renovation involving civil work. This expense resulted in an advantage / benefit of a enduring nature in as much as it *inter alia* resulted in the appellant being able to accommodate more number of employees and facilitate improving its trading operations. Thus the benefit obtained by the appellant, according to the Authorities was substantially in the capital field and could not be entirely allowed as revenue expenditure. The

submission on behalf of the appellant, before us, that as the appellant does not own the premises the expenditure incurred on renovation goes to the benefit of the owner of the said premises, therefore in the hands of the tenant it can only be revenue expenditure is more then met by the impugned order of the Tribunal. This in view of the fact that the impugned order places reliance upon Explanation-I to Section 32 of the Act, which allows depreciation to a tenant in case of any capital expenditure incurred for renovation / improvement to the building in the hands of the tenant by deeming the tenant to be the owner of the premises. In this case the benefit of depreciation has been given to the appellant on the capital expenditure incurred for renovation.

6. Mr. Jhaveri, learned Counsel for the appellant-assessee then submits that on an identical fact situation expenditure incurred by tenant has been allowed as revenue expenditure by this Court. Therefore it is submitted that the entire issue is no longer open to debate as it stands concluded in favour of the appellant by the decisions of this Court in *Talathi & Panthaki Associates Pvt. Ltd. (supra)* and *Hede consultancy Pvt. Ltd. (supra)*. In *Talathi & Panthaki Associates Pvt. Ltd. (supra)* the tenant of the premises had contributed a sum of Rs.1.50 crores to the work of repairs and restoration/reconstruction of the

building in which it was a tenant. The entire amount of Rs.1.50 crores was claimed as revenue expenditure. The assessee therein had entered into an agreement with the developer to contribute Rs.1.50crores for the reconstruction / repairs / restoration of the building in consideration of there being no increase in the rent payable by the assessee in the new structure to that being paid in the old structure. It was in the aforesaid facts that it was held that where a lump-sum payment of Rs.1.50 crores gets rid of annual business expenses chargeable against revenue then the lumpsum is to be regarded as a revenue/business expenditure. The benefit obtained by the assessee in the above case was premises at a lower rent in view of the contribution made to the developer for repairing / reconstructing the premises. Thus, the expenditure was in the revenue field and allowable under Section 37 of the Act. In the present facts, nothing is on record to indicate that there was any advantage secured by the appellant in the revenue field. There was no decrease in the rent nor was there any embargo on future increase in the rent in consideration of the expenditure for renovation. Therefore, the above decision would not apply to the facts of the present case.

7. Similarly, the decision of this Court in *Hede consultancy Pvt. Ltd.*

(supra) upon which also reliance is placed upon also dealt with the situation where the amount expended for interior decoration and renovating of a godown premises so as to be converted into an office premises was allowed as a revenue expenditure, will not apply to the present facts. This is because in that case the tenant got the benefit of lower rent in view of the expenditure incurred on renovation. It was in that context that this Court upheld the view of the Tribunal that the expenditure for repairs and renovation was in the revenue field. As pointed out above, in the present case, there is nothing on record to indicate that any benefit was obtained by the assessee in the revenue field for having expended the amount of Rs.31.32 lakhs for repairs / renovation of the office premises. Thus, the aforesaid decisions would have no application to the facts of the present case.

8. It was next contended there is no basis indicated by the Authorities under the Act for apportioning the expenditure in the ratio of 75% and 25% between capital and revenue account by the Revenue. We find that the authorities on facts found that some of the expenditure incurred out of Rs.31.32 lakhs was incurred for maintenance such as plastering etc. This allowing of 25% was on the basis of an estimate. Nothing has been shown to us that the estimation by the authorities on

the basis of facts found was in any way arbitrary or perverse. Thus we find no merit in the above submission.

9. In the view taken by us that the expenditure of 75% of Rs. 31.32 lacs i.e. Rs. 23.49 lakhs is on capital account, the submission to claim deduction on account of Section 30 of the Act made by the Appellant need not be examined. Nor the decision of the Delhi High Court in ***Commissioner of Income Tax Vs. Hi Line Pens Pvt. Ltd. 306, ITR 182*** relied upon for interpretation of Section 30 of the Act need be examined. This for the reason that the Explanation to Section 30 of the Act itself provides that the amount paid on the cost of repairs would not include any expenditure which is in the nature of capital expenditure. Although this Explanation to Section 30 of the Act was introduced in 2004 w.e.f. 1st April, 2004, the Explanation itself clarifies that it has been introduced for removal of doubts. Therefore, it would be applicable even for the period prior 1st April, 2004 including the subject Assessment year. It is for the above reason the learned Counsel for the appellant very fairly did not even attempt to suggest that deduction under Section 30 of the Act would be available even in respect of capital expenditure.

10. In the above view, the concurrent finding of fact by the

Authorities under the Act that the expenditure incurred claiming to be the repairs and maintenance was in fact on account of renovation of the premises, leading to enduring benefit to the appellant assessee in as much as it enabled the appellant to accommodate larger number of employees and also facilitate its trading operations. This benefit would be available to it for a long period of time and thus, was capital in nature. It was in the above view that the Tribunal granted the benefit of depreciation to the extent the claim as revenue expenditure was disallowed.

11. In the above view, we find that the view taken by the Authorities under the Act including the Tribunal, cannot be faulted as the appellant has failed to establish that the expenditure of Rs.31.32 lakhs claimed as “Repairs and Maintenance” was in the revenue field. In the above view, the substantial question of law as framed hereinabove in paragraph 2 is answered in the affirmative i.e. in favour of the respondent Revenue and against the appellant assessee.

12. The appeal is disposed of in the above terms.

(A.K. MENON, J.)

(M.S. SANKLECHA, J.)