

ORDER SHEET

ITA 41 OF 2005  
IN THE HIGH COURT AT CALCUTTA  
Special Jurisdiction (Income Tax)  
ORIGINAL SIDE

M/S. JALAN DISTRIBUTORS PVT. LTD.  
Versus  
COMMISSIONER OF INCOME TAX, KOLKATA

BEFORE:

The Hon'ble JUSTICE SOUMITRA PAL

The Hon'ble JUSTICE ISHAN CHANDRA DAS

Date : 15<sup>th</sup> September, 2015.

For appellant : Mr.Ananda Sen,Advocate  
Mr.M.Gupta,Advocate  
Mr.A.Samanta,Advocate

For Respondent/revenue : Mr.M.P.Agarwal,Advocate

**Soumitra Pal, J:-**

The Court : This appeal under section 260A of the Income Tax Act, 1961 preferred against the order dated 15<sup>th</sup> October, 2004 passed by the Income Tax Appellate Tribunal, 'C' Bench, Kolkata for the assessment year 1998-99 was admitted on the following substantial question of law:

*Whether on the facts and in the circumstances of the case the Tribunal erred in law in not allowing the claim of the assessee of interest u/s.36(1)(iii) of the*

*I.T.Act, 1961 when on the contrary the ingredients for claiming the deduction u/s.36(1)(iii) of the Act was present in the instant case and further the requirements for claiming the said deduction was satisfied by the assessee and whether the decision arrived at by the Hon'ble Income Tax Appellate Tribunal by ignoring the same and without arriving at an independent finding as to how the claim of the assessee was not sustainable is perverse ?*

The facts, as evident from the stay application filed by the appellant which is a part of the Paper Book, are that the appellant-company is engaged in the business of film production, distribution and exhibition. The residential house of the directors of the company is at 3/1 Queens Park, Kolkata- 700019. The said premises is owned by one of the Directors of the company, namely Pritam Jalan, along with other co-sharers having 50% share therein. Since some disputes arose between the co-sharers, the appellant by an agreement dated 6<sup>th</sup> August, 1996 obtained 50% portion of the said premises. The said premises was taken by the appellant on rent from the landlord after making a security deposit of Rs.48 lakhs. The property was valuable one and the rent was fixed at of Rs.9,000/-. For the assessment year 1998-99, the appellant filed return of income showing the total income of Rs.78,208/-. The case was processed under section 143(1) of the Income Tax Act, 1961. Subsequently, the case was selected for scrutiny. Accordingly notices under section 143(2) and 142(1) were issued and served on the appellant. The appellant appeared for hearing before the Deputy

Commissioner of Income Tax and filed details. On 30<sup>th</sup> March, 2001, the Deputy Commissioner of Income Tax passed an order under section 143(3) assessing the total income at Rs.5,17,330/-.

Aggrieved by the said assessment order, the appellant preferred appeal before the Commissioner of Income Tax (Appeals), Kolkata mainly on the ground that the Assessing Officer erred in law and as well as in the fact in disallowing the claim of interest expenditure of Rs.3,60,000/- in connection with the security deposit given by the appellant to the landlords for taking the said premises for its business purposes and also the disallowance of the entire payment of rent of Rs.63,000/- for the said premises. The CIT(A) allowed the appeal by deleting the disallowance of Rs.3,60,000/- and 63,000/- on the ground that the Assessing Officer had incorrectly disallowed the interest expenditure as well as rental expenditure.

Aggrieved, the revenue preferred appeal before the Tribunal. The Tribunal by the impugned order allowed the appeal by holding as under:

*“We have considered the rival submissions. We find that the A.O. specifically requested the assessee to file necessary evidence in support of its claim that the said premises were used for the purpose of its business as business asset ever since the agreement dated 6.8.1996. In response thereto, the assessee submitted a letter stating that the said property was used for commercial purpose but apart from mere claiming, the assessee could not submit any evidence to prove that the said premises were ever*

*used by it for its business purpose. The premises is admittedly situated in residential area of Kolkata. On a specific query from the Bench, the Ld.Counsel stated that the assessee has no evidence of any mention of this premises in the insurance policy against fire of the building or in the bank account etc. We find that CIT (Appeals) has decided the issue in favour of the assessee by merely observing that the A.O. should not have drawn any hasty conclusion on non-business use of the premises merely because the assessee had failed to produce any case of the trade licence etc. before him. In the facts of the case we hold that the assessee has failed to lead any evidence to suggest that the premises in question were ever used for its business purposes. Accordingly, we reverse the order of the CIT (Appeals) on the issue and allow the grounds of appeal of the Revenue for both the years.”*

It is submitted by Mr.Ananda Sen, learned Advocate appearing on behalf of the appellant that since documents, such as, agreements between the co-sharers and the answer to the questionnaire under section 142(1) prepared by the Assessing Officer, were filed before the Assessing Officer, the Tribunal should have considered the same and should have allowed the appeal dismissing the appeal filed by the revenue.

Relying on the judgement of the Calcutta High Court in Tirupati Trading Co. v. CIT (Cal) : (2000) 242 ITR 13 (Cal), Mr.M.P.Agarwal, learned advocate appearing on behalf of the revenue has submitted that save and except a letter

stating that the property was used for commercial purpose which was filed before the Tribunal, as no other evidence was furnished, the order of the Tribunal may not be interfered with.

Heard learned advocates for the parties.

Perusing the impugned order, we find that the Tribunal had observed that though the Assessing Officer had specifically requested the assessee to file necessary evidence in support of the claim that the premises was used for the purpose of business, the assessee could not submit any evidence to prove that the said premises was used for its business purpose. We further find that on a specific query by the Tribunal the learned counsel had stated that he was unable to submit insurance policy against fire of the building and trade licence to show that the premises was used for business purpose. Therefore, as facts were dealt with in detail by the Tribunal and no cogent evidence could be adduced by the assessee in support of its claim, in view of judgment *Tirupati Trading Co. (supra)*, the order of the Tribunal requires no interference.

Therefore, the question is answered in the negative, in favour of the revenue and against the assessee.

Hence the appeal is dismissed.

(SOUMITRA PAL, J.)

I agree.

(ISHAN CHANDRA DAS, J.)