ORDER SHEET

ITA 622 OF 2004

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction (Income Tax)

ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,KOL-II

Vs.

NORINCO (P) LTD.

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ARINDAM SINHA

Date : 6TH February, 2015.

Appearance :

For appellant/revenue : Mrs.Smita Das De,Advocate

For respondent/assessee : Mr.M.K.Lodh, Advocate.

The Court : The subject matter of challenge in this appeal is a judgement and order dated 29th April, 2004 by which the learned Tribunal agreeing with the CIT(Appeals) held that the expenses incurred by the assessee were allowable under section 30 of the Income Tax Act. The facts and circumstances of the case briefly stated are as follows.

The assessee had an office at Kolkata and laboratory at Goa. The office at Kolkata was gutted by fire. The fire, as a matter of fact, continued for four days. Damages were of an extensive nature. The assessee after obtaining permission from the Fire Brigade Department entered into the burnt down office after four days. In repairing the office it incurred a little over a sum of Rs.7 lakhs. Goa laboratory of the assessee was badly damaged by flood and cyclone which was also required to be repaired and in doing so the assessee incurred an expenditure of a sum of Rs.3 lakhs approximately. The question arose whether the aforesaid expenditure was deductible by way of revenue expenditure. The assessing officer was of the opinion that a very insignificant part of the total expenditure was permissible by way of expenses under section 30 of the Income Tax Act and the balance sum was to be treated as an expenditure of a capital nature.

The assessee preferred an appeal. The CIT(Appeals) held that the entire expenditure was of a revenue nature and therefore, deductible. In an appeal preferred by the revenue, the learned Tribunal has concurred with the views of the CIT(Appeals). It is this order of the learned Tribunal which is under challenge. The following questions of law have been proposed by the revenue.

"*a) Whether on the facts and in the circumstances of the case, and on a proper interpretation of the provisions of Section 30 of the Income Tax Act, the learned Tribunal was right in upholding the order of the Commissioner of Income Tax (A) on the ground that the expenditure under the head "repairs" were incurred to preserve and maintain an already existing asset and not to bring a new asset into existence ?*

b) Whether on the facts and in the circumstances of the case the order of the learned Tribunal is perverse in the eye of law ?"

We have heard Mrs. Das De, learned advocate appearing for the revenue and have not been impressed by her submission.

Section 30 permits deduction of expenses on account of rent, rates, taxes, repairs and insurance of rented accommodation. An explanation has been added to section 30 which reads as follows :

"30. Rent, rates, taxes, repairs and insurance for buildings.-In respect of rent, rates, taxes, repairs and insurance for premises, used for the purposes of the business or profession, the following deductions shall be allowed –

(a) where the premises are occupied by the assessee –

(i) as a tenant, the rent paid for such premises; and further if he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs;

(ii) otherwise than as a tenant, the amount paid by him on account of current repairs to the premises;

(b) any sums paid on account of land revenue, local rates or municipal taxes;

(c) the amount of any premium paid in respect of insurance against risk of damage or destruction of the premises."

The learned Tribunal concurring with the CIT (Appeals) held that the expenses were incurred to bring back the office and the laboratory in its original position, that is to say, before the fire took place. Such repairs were necessary to carry on the business smoothly. The assessing officer had applied Explanation 1 to section 32 which reads as follows :

"*Explanation 1.- Where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy and any capital expenditure is incurred by the assessee for the purposes of the business or profession on the construction of any structure or doing of any work, in or in relation to, and by way of renovation or extension of, or improvement to, the building, then, the provisions of this clause shall apply as if the said structure or work is a building owned by the assessee.*"

The question for consideration is whether the expenditure was incurred by the assessee for the purpose of enhancing the value of its capital assets. If that question is answered in the affirmative then the expenditure shall become an expenditure of a capital nature. But if an answer to that question is in the negative, then the expenditure shall be of a revenue nature.

The assessing officer has no-where pointed out that by incurring expenditure the assessee has enhanced his capital assets. On the contrary, the finding is that the expenditure was necessary to repair the damage caused by fire. It was, therefore, clear case of a revenue expenditure.

For the aforesaid reasons, question no.(a) is answered in the affirmative and question no.(b) is in the negative and in favour of the assessee.

The appeal, thus, is disposed of.

(GIRISH CHANDRA GUPTA, J.)

(ARINDAM SINHA, J.)

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