

Expenditure incurred on tenancy rights during acquisition of running business is revenue expenditure

Summary – The High Court of Karnataka in a recent case of S.M. Dayanand, (the Assessee) held that where assessee purchased a running hotel business and vendor had to secure lease rights of premises from owner, expenditure incurred towards such tenancy right should be allowable as revenue expenditure.

Facts

- The assessee purchased a running hotel business with all assets including furniture, fixture, utensils, hotel license and Bar license. As per terms of agreement, it was the responsibility of the vendor to secure transfer of lease of premises in favour of purchaser. Further, the vendor had to negotiate on behalf of the purchaser with owner for transfer of unexpired lease period in favour of the purchaser and also extension of lease subject to payment of enhanced rent and deposit.
- Out of total sale consideration of Rs. 70 lakh, Rs. 55 lakh was paid towards tenancy right. The assessee claimed the said expenditure to be revenue in nature and while submitting the return, the assessee claimed write off of 1/5th of said expenditure every year.
- The Assessing Authority refused to give write off on the ground that expenditure incurred by the assessee was only capital expenditure towards goodwill and thus, not entitled to deduction.
- On appeal, the appellate Authority as well as the Appellate Tribunal confirmed the order of the Assessing Authority.
- On appeal before High Court:

Held

- Record disclosed that expenditure incurred for getting the said restaurant was revenue expenditure and it could not be treated as capital expenditure.
- The Supreme Court in *CIT v. Associated Cement Companies Ltd.* [\[1988\] 172 ITR 257/38 Taxman 110A](#) had held that the advantage secured by incurring expenditure for absolution or immunity from liability on revenue account would be in field of revenue and not capital.
- The assessee was entitled for deduction towards tenancy right and order passed by the Tribunal was liable to be set aside.
- The substantial question of law was held in favour of the assessee.