

## Delhi HC allows deduction of disputed licence fee payable to NDMC

**Summary – The High Court of Delhi in a recent case of Aggarwal and Modi Enterprises (Cinema Project) Co. (P.) Ltd., (the Assessee) held that where assessee obtained a licence from NDMC for running a cinema hall against payment of licence fee and NDMC at stage of renewal of licence enhanced licence fee and Sub Judge restrained NDMC from recovering enhanced amount of licence fee till disposal of suit, assessee following mercantile of accounting was entitled for deduction of certain amount towards licence fee and interest on arrears of licence fee payable to NDMC**

### Facts

- A cinema hall in the name of Chanakya Cinema belonged to the New Delhi Municipal Council [NDMC].
- In terms of an agreement dated 16-9-1970 entered into with the NDMC, the assessee obtained a licence for running the said cinema hall for a period of ten years, *i.e.*, from 1-10-1970 to 30-9-1980 against payment of licence fee. The agreement gave an option to the assessee to get its licence renewed for a further period of ten years on the terms and conditions to be mutually agreed to between the parties.
- The assessee applied for renewal of the licence on 11-1-1980. A week prior to the expiry of ten years, on 23-9-1980, a fresh licence agreement was entered into between the assessee and the NDMC. The annual licence fee was increased by the NDMC to some extent. The assessee paid the increased licence fee from October, 1980 to March, 1981 under protest.
- Later on 9-4-1981, the assessee filed a suit challenging the increase in the licence fee. By an order dated 22-1-1982, the Sub Judge restrained the NDMC from recovering the enhanced amount of the licence fee till the final disposal of the suit.
- In the meanwhile a resolution was passed by the NDMC on 25-3-1981, whereby it was decided that licenses generally would be renewed for an additional licence fee of 30 per cent over the original licence fee. The Sub Judge by an order dated 28-2-1983 also restrained the NDMC from disturbing the *status quo* at 30 per cent of the enhanced rate of licence fee till a decision in the suit.
- Thereafter the High Court by an order dated 11-2-1985 directed that the assessee would be entitled to *status quo* and carry on the business of running Chanakya Cinema on payment of an additional 30 per cent licence fee till the disposal of the suit by the Sub Judge.
- The proceedings between the assessee and the NDMC were still pending adjudication.
- The assessee was following the mercantile system of accounting.
- In the returns filed for the assessment years 1982-83 to 2008-09, it claimed deduction of certain amount towards licence fee and interest on arrears of licence fee payable to the NDMC.
- The Assessing Officer disallowed the claim of deduction in relation to the assessment years 1987-88 to 1992-93, 1995-96, 1997-98 to 2001-02 and 2003-04 and allowed the claim of deduction for the remaining assessment years.
- The Tribunal upheld the orders of the Assessing Officer.

- On appeal to High Court:

#### **Held**

##### ***Ascertained or contingent liability***

- Whether a liability is ascertained or contingent is dependent on the facts of each case. Merely because a liability may be contractual or non-statutory would not make it incapable of being ascertained. Where an assessee follows the mercantile system of accounting, it is not necessary that the liability must have actually been incurred during the assessment year in question to enable the assessee to claim it as an expense or deduction as the case may be. The crux of the matter is the reasonable certainty with which the liability can be ascertained.

##### ***Sequence of facts on record***

- It is not as if the assessee has disputed its liability to pay licence fee. In other words, during the assessment years in question it continued to pay the annual licence fee to the NDMC and in those years it was protected in terms of an interim order. What was being disputed by the assessee in the suit initiated against the NDMC was the reasonableness of the enhancement of the licence fee at the stage of renewal of the licence. There is a distinction between disputing the liability as such and disputing the reasonableness of the enhancement of the licence fee.

##### ***Consideration of case on merits***

- Merely because the assessee had chosen to challenge in Court the enhancement of the licence fee, which was permissible to be raised by it in accordance with law, did not preclude the assessee, which was following the mercantile system of accounting, from claiming it as a liability during the assessment years in question.
- The Tribunal also appears to have drawn a distinction between a statutory liability and a contractual liability and opined that a deduction in respect of the contractual liability would be permissible only when the disputes are settled. This is contrary to the legal position. Even where a challenge is laid to a liability arising under a contract, by a challenger initiating legal proceedings, such challenger can still for the purposes of its accounts and for the purposes of computation of its income tax liability claim the entire amount under challenge as an accrued liability as long as such amount is ascertainable. Corresponding adjustments would be made in the year in which the suit is finally decided or the disputes settled. That, however, would not preclude the assessee from claiming it as an ascertained liability.

##### ***Rule of consistency***

- There is indeed a demonstrable inconsistency in the revenue's stand in the matter. While the assessee consistently claimed liability towards licence fee, the revenue appears to have accepted it in its entirety in some years and not in some others.
- This is indeed an extraordinary case of the revenue continuously changing its stand during the assessment years in question. On the rule of consistency, the case of the revenue cannot be accepted.

***Conclusion***

- In view of the aforesaid, the assessee was entitled for deduction of the amount towards licence fee and interest on the arrears of licence fee payable to the NDMC.