

Sum paid on encroachment of extra space on leased land couldn't be said to be an offence; allowable as business exp.

Summary – The High Court of Calcutta in a recent case of Mundial Export Import Finance (P.) Ltd., (the Assessee) held that where assessee had taken on lease a plot of land from Calcutta Port Trust (CPT) and it had encroached some of land belonging to CPT and on being asked paid certain amount to CPT to compensate loss suffered by CPT, payment to CPT was an expenditure incurred wholly and exclusively for purposes of business

Facts

- The assessee had taken on lease a plot of land from the Calcutta Port Trust (CPT) under a lease agreement dated 21-10-1982. It had encroached some of land belonging to the trust. The CPT by a letter dated 28-9-2000 asked the assessee to pay damages before its proposal for grant of lease in respect of the encroached land could be placed before the Board of Trustees for examination.
- The assessee paid a certain amount to the CPT to compensate the loss suffered by CPT due to occupation of land in excess of what was demised to it and claimed deduction of the same as a revenue expenditure.
- The Assessing Officer disallowed the payment in question.
- Both the Commissioner (Appeals) and the Tribunal upheld the order of the Assessing Officer.
- On appeal to High Court:

Held

Question arising

- The question is whether the aforesaid expenditure is an amount expended fully and exclusively for business purposes within the meaning of section 37(1).

Consideration of case

- The payment was made to compensate the loss suffered by CPT due to occupation of land in excess of what was demised to the assessee. Therefore, the payment did not partake the character of penalty. The payment could not partake the character of a capital expenditure, because contention of the CPT was that the prayer for lease of the land unauthorisedly occupied could not be examined before payment of the compensation. Therefore, the payment was altogether compensatory for the benefit already received by the assessee by user of the land which had or could have nothing to do with a grant of lease in future.

Conclusion

- In view of the aforesaid, the payment to the CPT by the assessee was an expenditure incurred wholly and exclusively for the purposes of the business and, therefore, allowable as deduction under section 37(1).