Bombay HC treats renovation exp. on leasehold premises as capital exp.

Summary – The High Court of Bombay in a recent case of RPG Enterprises Ltd., (the Assessee) held that where assessee claimed an expenditure to be for repairs and maintenance but it was, in fact, on account of renovation of premises taken on rent which led to enduring benefit for a long period of time, inasmuch as it enabled appellant to accommodate larger number of employees and also facilitated trading operations, said expenditure was capital in nature

Facts

- Since the year 1995, the appellant was in occupation as a tenant of a floor of a building. The appellant was paying a monthly rent of Rs. 73,530. During the current year, the appellant had debited a sum of Rs. 47.63 lakhs to the profit and loss account under the head 'Repairs and Maintenance' while determining its income. Out of the aforesaid amount of expenditure, an amount of Rs. 31.32 lakhs related to the rented premises.
- The Assessing Officer on examination of the nature of expenses found that the same were substantially capital in nature, *i.e.*, renovating the said premises by doing civil work. However, some part of its expenditure was found to be revenue in nature, such as plastering. Therefore, the Assessing Officer attributed 75 per cent of the expenditure claimed as capital and 25 per cent as revenue. The Assessing Officer allowed revenue expenditure so attributed and also 10 per cent depreciation under section 32 on the capital expenditure.
- On appeal, the Commissioner (Appeal) held that substantial expenses incurred on the said premises was on account of major structural renovation; thus, capital in nature. Therefore, the Commissioner (Appeals) upheld the Assessment order of the Assessing Officer.
- On appeal, the Tribunal, on facts, found that substantially, the expenditure on renovation gives a benefit or advantage of enduring nature. Therefore, the expenditure, substantially on capital account, would qualify for depreciation in terms of *Explanation I* to Section 32. In the circumstances, it upheld the order of the Commissioner (Appeals).
- On appeal to High Court:

Held

- The tenancy agreement provided that the cost of repairs and renovation *i.e.* civil, electrical, plumbing, polishing *etc.* would be carried out by the appellant at its own expenses after taking prior permission from the landlord. All the Authorities under the Act have rendered a finding of fact that the so-called "repairs and maintenance" were in fact extensive renovation involving civil work. This expense resulted in an advantage/benefit of a enduring nature inasmuch as it *inter alia* resulted in the appellant being able to accommodate more number of employees and facilitate improving its trading operations. Thus, the benefit obtained by the appellant, according to the Authorities was substantially in the capital field and could not be entirely allowed as revenue expenditure. The

submission on behalf of the appellant, that as the appellant does not own the premises the expenditure incurred on renovation goes to the benefit of the owner of the said premises, therefore in the hands of the tenant it can only be revenue expenditure is more then met by the impugned order of the Tribunal. This in view of the fact that the impugned order places reliance upon *Explanation* I to section 32 which allows depreciation to a tenant in case of any capital expenditure incurred for renovation/improvement to the building in the hands of the tenant by deeming the tenant to be the owner of the premises. In this case the benefit of depreciation has been given to the appellant on the capital expenditure incurred for renovation.

- The authorities on facts found that some of the expenditure incurred out of Rs. 31.32 lakhs was incurred for maintenance such as plastering *etc.* This allowing of 25 per cent was on the basis of an estimate. Nothing has been shown that the estimation by the authorities on the basis of facts found was in any way arbitrary or perverse. Thus, there is no merit in the above submission.
- In the view that the expenditure of 75 per cent of Rs. 31.32 lakhs *i.e.*, Rs. 23.49 lakhs is on capital account, the submission to claim deduction on account of section 30 made by the Appellant need not be examined. Nor the decision of the Delhi High Court in *CIT* v. *Hi Line Pens (P.) Ltd.* [2008] 306 ITR 182/175 Taxman 132 relied upon for interpretation of section 30 need be examined. This for the reason that the Explanation to section 30 itself provides that the amount paid on the cost of repairs would not include any expenditure which is in the nature of capital expenditure. Although this Explanation to section 30 was introduced in 2004 with effect from 1-4-2004, the Explanation itself clarifies that it has been introduced for removal of doubts. Therefore, it would be applicable even for the period prior 1-4-2004 including the subject assessment year. It is for the above reason the appellant very fairly did not even attempt to suggest that deduction under section 30 would be available even in respect of capital expenditure.
- In the above view, the concurrent finding of fact by the Authorities under the Act that the expenditure incurred claiming to be the repairs and maintenance was in fact on account of renovation of the premises leading to enduring benefit to the appellant assessee inasmuch as it enabled the appellant to accommodate larger number of employees and, also facilitate its trading operations. This benefit would be available to it for a long period of time and, thus, was capital in nature. It was in the above view that the Tribunal granted the benefit of depreciation to the extent, the claim as revenue expenditure was disallowed.
- In the above view, the view taken by the Authorities under the Act including the Tribunal, cannot be faulted as the appellant has failed to establish that the expenditure of Rs. 31.32 lakhs claimed as "Repairs and Maintenance" was in the revenue field.