

Capital expenditure - Sum forfeited by seller since buyer failed to pay full instalments for use & purchase of Windmill.

Summary – The High Court of Bombay in a recent case of Nandkishor Motilal Shah., (the Assessee) held that any sum forfeited by seller in a case where the buyer failed to pay full installments for use & purchase of Windmill would be treated as capital expenditure

Facts

- The assessee entered into a Memorandum of Understanding with Sunshine Enterprise for the purchase of a windmill plant along with land on which the same was situated for the total sale consideration of Rs. 5.71 crores. The MOU had a forfeiture clause in case the assessee did not make full payment towards purchase price as per schedule of payments. After making initial payment, the assessee defaulted in making further payments and hence the MOU was cancelled. The seller forfeited a sum of Rs. 90 lakhs and returned the rest to the assessee. The assessee filed the return of income and claimed a deduction of Rs. 90 lakhs as a revenue loss.
- The Assessing Officer held that the loss was a capital in nature and not revenue loss.
- The Tribunal agreed with the contention of the AO.

Held

- As per the terms of the agreement the title of the property was not to pass to the assessee till full payment was made. The agreement mentioned that the transfer of the title would happen only upon the full payment of the sale consideration as per the MOU. Till such time as the title did not pass, the assessee was to be considered as a permissive user.
- The HC held that the title in the property never passed to the assessee under the MOU and hence the sum of Rs. 90 lakhs forfeited by the seller cannot be treated as lease rental. It had to be treated as a capital expenditure. The MOU was an integrated contract for sale of the asset and permissive user of the asset till the full payment is made.
- In the result, the Income-tax Appeal was dismissed by the HC.