

Danesh A. Irani vs Commissioner Of Income Tax

ID: F2J-C-2665 **Court:** Bombay High Court

Case: Income tax Appeal No.513 of 2005 **Date:** 2010-08-30

Complete searchable public court-text reproduction. This clean reference PDF is generated by Finin2min; the linked public source remains controlling.

[Cites 9, Cited by 0]

Bombay High Court Danesh A. Irani vs Commissioner Of Income Tax on 30 August, 2010 Author: R.M.Savant Bench: V.C. Daga, R. M. Savant 1 Income tax Appeal No.513 of 2005

mmj IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.513 OF 2005

Danesh A. Irani) of Mumbai Indian Inhabitant) residing at Dhub-Abad, 106,)

Bhulabhai Desai Road, Mumbai 400 036)..Appellant

Vs.

Commissioner of Income Tax, Mumbai)

City-XVI, having his office at) Matru Mandir, Tardeo)..Respondent

Mr. Soli Dastur, Sr. Advocate with Mr. Neeraj Sheth and Mr. Nikhil Pai i/b Humranwala & Co. for the Appellant

Mr. P. S. Sahadevan for the Respondent

CORAM :- V.C.DAGA &

R.M.SAVANT,JJ. DATE :- 30th August, 2010

JUDGMENT (Per Shri R.M.Savant, J.)

1 The above Appeal has been filed by the Assessee challenging the order dated 15th June 2005 passed by the E-Bench, of the Income Tax Appellate Tribunal in Income Tax Appeal No.3149/Mum/2001, by which order, the said Appeal came to be decided against the Assessee and the order passed by the Assessing Officer, came to be confirmed by the Tribunal. 2 The following substantial questions of law arise for consideration in the above Appeal: ::: Downloaded on - 09/06/2013 16:22:50 :::

2 Income tax Appeal No.513 of 2005 "i. Whether on the facts and the circumstance of the case, the Tribunal was justified in restricting the allowance for deduction of expenditure incurred on repairs to the roof of the building commensurate with the area that was occupied by the assessee for the purpose of his business.

ii. Whether on the facts and in the circumstances of the case the Tribunal having found that the expenditure incurred was in the revenue field and it being an admitted position that the Appellant was occupying a major part of the commercial premises in the building, for the purpose of his business was the Tribunal justified in not allowing the reduction claimed in its entirety." 3 The facts leading to the filing of the above Appeal can be stated thus:

The building in question in respect of which the Assessee i.e the Appellant above name has carried out the repairs to the roof and in respect of the expenditure of the repairs of which the Appellant is claiming deduction is ::: Downloaded on - 09/06/2013 16:22:50 ::: 3 Income tax Appeal No.513 of 2005 owned by a Trust pursuant to an Indenture of Trust dated 6th October 1937.

The building consist of ground plus three floors with a terrace floor above it, which floor is occupied by the beneficiaries which include the Appellant in their capacity as beneficiaries. The first, second and third floor is tenanted to outsiders. From the point of view of the issue in the Appeal, it is relevant to note that the ground floor comprises an area of 30,000 sq.ft. Of which the Appellant is a tenant approximately 3700 sq.ft. and is used by the Appellant for the purpose of his business, as franchisee of M/s. Grasim Industries Ltd. As per the Appellant the building was constructed prior to the year 1940 and initially had a roof which was made of mangalore tiles. It is the case of the Appellant that due to the building being old, considerable leakage was taking place from the roof as a result of which the load bearing wall of the building were progressively getting weakened. It is the case of the Appellant that on account of the leakage there was an apprehension of short circuit and consequential fire to the building. It was in these said circumstances that it was decided to replace the leaking mangalore tile roof by a concrete slab. Neither the land lord who was incapacitated to carry out repairs due to paucity of funds, nor the other tenants showed any desire to carry out the repairs inspite of the said condition of the building. The Appellant who was carrying on business from the ground floor as a tenant felt that it was in the interest of his business and commercial expediency necessitated that the expenditure on the replacement of the roof be incurred so as to protect his tenancy rights. The Appellant accordingly incurred an amount of Rs.17,63,280/- in the year previous to the :: Downloaded on - 09/06/2013 16:22:50 ::: 4 Income tax Appeal No.513 of 2005 Assessment year 1998-99 for carrying out repairs and claimed the same as deduction in computing his income chargeable to tax under the head "profits and gains of business or profession"

4 In so far as the assessment of the Appellant is concerned, the Assessing Officer completed the assessment under Section 143(3) by an order dated 31st January 2000 and assessed the Appellant to an income of Rs.

34,14,440/-. In so far as the claim for deduction is concerned, the Assessing officer was of the view that since the Appellant occupied 3700 sq.ft, area out of the total area of 30,000 sq.ft., the Appellant was not entitled to a deduction of two entire expenditure on repairs and if any deduction was to be allowed, it was only to the extent of the Appellant's share fixed on prorata basis having a nexus to the area occupied by him. The Assessing Officer on the premise that there was an enduring benefit which would accrue to the Appellant over a period of time, determined the said expenditure as on

capital account and hence was not allowable in computing the profits chargeable under the head "profits and gains of business or profession". The Assessing officer concluded that out of the total expenditure of Rs.17,63,280/-, the Appellant was entitled to a deduction only of Rs.3.26 lacs and even the said expenditure was not allowable as a deduction in view of the fact that it was in the capital field. The Assessing Officer accordingly directed the allowance of the deduction by way of depreciation in respect of the said amount of Rs.3.26 lacs.

Being aggrieved by the said order dated 31st January 2000 :: Downloaded on - 09/06/2013 16:22:50 :: 5 Income tax Appeal No.513 of 2005 passed by the Assessing Officer, the Appellant had preferred an Appeal to the Commissioner of Income Tax (Appeals). The principal ground of challenge was on the ground that the Assessing officer has disallowed the claim for expenditure incurred on repairs and maintenance of the building. The Commissioner of Income Tax (Appeals) had disposed of the said Appeal by his order dated 1st March 2001. The Commissioner of Income Tax (Appeals) inter alia held that the expenditure that was incurred was clearly in the nature of capital expenditure and, therefore, rejected the Appellant's contention for deduction of expenditure. However, notwithstanding, what he had held, directed the Assessing officer to grant the depreciation in respect of the entire expenditure without restricting it to the pro-rata share of the Appellant.

Aggrieved by the said order dated 1st March, 2001 passed by the Commissioner Income Tax (Appeals) the Appellant preferred an Appeal to the Income Tax Appellate Tribunal challenging the said order. The Appellant challenged it inter alia on the ground that the Commissioner of Appeal had treated the said expenditure incurred as in the capital field. The revenue had also preferred an Appeal to the Tribunal against the same order. In so far as the Appeal of the revenue was concerned, the same was filed challenging the findings of the Commissioner (Appeals) whereby he had directed the Assessing Officer to grant depreciation on the entire expenditure that was treated as capital in nature. Both the appeals were consolidated by the Tribunal and disposed of by a common order dated 15th June 2005. :: Downloaded on - 09/06/2013 16:22:50 ::

6 Income tax Appeal No.513 of 2005

5 From the point of view of the questions of law involved in the present Appeal, it is required to be noted that on behalf of the Appellant, it was urged before the Tribunal that the expenditure incurred was in the revenue field and that no advantage of enduring benefit was obtained. It was, therefore, the case of the Appellant before the Tribunal that the entire expenditure ought to have been allowed as deduction as admittedly the Appellant was occupying the premises for the purpose of his business. 6 On behalf of the revenue, it was urged before the Tribunal that the expenditure was in the capital field and since the Appellant was only one of the tenants. It was not necessary for the Appellant to incur the entire expenditure. It was further urged by the Revenue that both, the tenants, as well as the Land Lord were duty bound to bear the costs of repairs. Therefore, in any event according to the revenue the entire amount cannot be allowed as deduction. The Tribunal inter alia held that even though the Appellant was a trustee as well as the beneficiary of the trust, he was occupying a part of the building for the purpose of his business. Relying upon a Judgment of the Apex Court in CIT vs. Madras Auto Stores, 23 ITR page 468, the Tribunal has held that the expenditure incurred by the Appellant was the expenditure in the revenue field. The Tribunal on the premise that the fundamental duty to carry out the repairs of that of the Landlord and that the other tenants had also a :: Downloaded on - 09/06/2013 16:22:50 :: 7 Income tax Appeal No.513 of 2005 duty to share in the expenditure and further the Tribunal was of the view that the Appellant was entitled to deduction only on pro-rata basis. The Tribunal proceeded on the basis that in fact the repair work was also carried out by the Landlord trust but the expenditure was debited in the books of account of the Appellant. The Tribunal was of the view that the tenant incurring the expenditure for the entire building cannot be treated as expenditure wholly and exclusively for the purpose of the tenants business. The Tribunal, therefore, has by its said Judgment and order dated 15th June 2005 upheld the action of the Assessing officer in allowing the deduction only on a prorata basis, but in so far as treating the said expenditure as on account of revenue, disagreed with the Assessing Officer who treated the same as capital expenditure. 7 We have heard the Learned Senior Counsel Mr. Soli Dastur for the Appellant and Mr. Sahadevan the Learned Counsel appearing for the Respondents. On behalf of the Appellant, it was contended by the Learned Senior Counsel that the Appellant was a franchisee of M/s. Grasim and had a show room and retail outlet on the ground floor of the building in question and was occupying 3700 sq.ft. as a tenant in the said building. The Learned Senior Counsel submitted that in view of the fact that the building being old, water was seeping through the walls and percolating to the ground floor which part was occupied by the Appellant, which was not conducive to the carrying out of business by the Appellant. The Learned Senior Counsel submitted that :: Downloaded on - 09/06/2013 16:22:50 :: 8 Income tax Appeal No.513 of 2005 the Appellant in the said circumstances, thought it fit to repair the entire roof inasmuch as he has replaced the mangalore tiles roof with the RCC slab as and by way of commercial expediency as the Appellant was of the view that the same would be beneficial to the carrying on of his business in the premises in question. The Learned Senior Counsel submitted that once the Tribunal recorded a finding of fact that the expenditure incurred by the Appellant was on account of revenue, the Tribunal thereafter could not have restricted the deduction to the share of the Appellant calculated on a pro-rata basis but ought to have allowed the deduction of the entire expenditure incurred by the Appellant. The Learned Senior Counsel submitted that in so far as the aspect of commercial expediency is concerned, a finding of fact has been recorded by the Tribunal and, therefore, the Appellant was entitled to the deduction of the entire amount of expenditure incurred by the Appellant. 8 In so far as the aspect of the commercial expediency is concerned, the Learned Senior Counsel for the Appellant relied upon a Judgment of the Apex Court in the matter of Eastern Investments Ltd. Vs. Commissioner of Income Tax West Bengal reported in (1951) 20 ITR 1 wherein the Apex Court has culled out the relevant principles on page 4 of the said Judgment "(b) it is not necessary to show that the expenditure was a profitable one or that in fact any profit was earned : Moore V. Stercarts and Lloyds and Usher's Case :: Downloaded on - 09/06/2013 16:22:50 :: 9 Income tax Appeal No.513 of 2005 (c) it is enough to show that the money was expended "not of necessity and with a view to a direct and immediate benefit to the trade, but voluntarily and on the ground of commercial expediency, and in order indirectly to facilitate the carrying on of the business." British Insulated and Helsby Cables Ltd. V Anthrton and (d) beyond that no hard and fast rule can be laid down to explain what is meant by the word "solely." Clauses (b) and (d) of the said principles according to the Learned Counsel are relevant for the purpose of the instant Appeal. 9 The Learned Senior Counsel for the Appellant has further relied upon the Judgment of the Apex Court in Commissioner of Income-Tax, Bombay v/s. Walchand and Co. Private Ltd., reported in 9167 I.T.R. (SC) 381 wherein the Apex Court has held that in applying the test of commercial expediency of determining whether an expenditure was wholly and exclusively laid out for the purpose of the business, reasonableness of the expenditure has to be adjudged from the point of view of the businessman and not of the revenue. The nature of the jurisdiction predicates that the Tribunal will approach and decide the case in a judicial spirit and for that purpose it must indicate the disputed questions before it with evidence pro and con and record :: Downloaded on - 09/06/2013 16:22:50 :: 10 Income tax Appeal No.513 of 2005 its reasons in support of the decision. The practice of recording a decision without reasons in support cannot but be severely deprecated." 10 In so far as the claim of the Appellant for the deduction of the entire expenditure is concerned, the Learned Senior Counsel relied upon the Judgment of the Division Bench of this Court in Tata Sons Vs. Commissioner of Income Tax, Bombay City and the Judgment of the Apex Court in Sassoon J David and Co. P. Ltd. v/s. Commissioner of Income Tax Bombay reported in 1979 I.T.R. (S.C.) 261 the sum and substance of what has been held by the Apex Court is that the expenditure of which the deduction is sought may be voluntarily and without any necessity and if it is incurred for promoting the business and to earn profits, the assessee can claim deduction under the Act even though there was no compelling necessity to incur such expenditure. The fact that somebody other than the assessee is also benefited by the expenditure, should not come in the way of an expenditure being

allowed by way of deduction under the Act if it satisfies otherwise the tests laid down by law. 11 On behalf of the Respondents Shri Sahadevan the Learned Counsel submitted that though the Tribunal has held that the expenditure is on account of revenue in terms of Section 38 of the Income Tax Act, a discretion is vested with the Assessing officer to grant proportionate deduction considering the facts and circumstances of the case. The Learned Counsel submitted that in :: Downloaded on - 09/06/2013 16:22:50 :: 11 Income tax Appeal No.513 of 2005 the facts of the present case wherein the Appellant is a tenant and occupies an area of 3700 sq.ft. out of about 30,000 sq.ft. The Assessing officer was right in granting deduction on prorata basis. The Learned Counsel further submitted that the Tribunal has for reasons mentioned in its order has upheld the grant of proportionate deduction to the Appellant, as can be seen from the said Order. The Learned Counsel for the Respondents, therefore, submitted that no interference is called for with the order passed by the Tribunal. 12 We have heard the Learned Counsel for the parties and have bestowed our anxious consideration to the rival contentions. It would be gainful to reproduce the part of the order of the Tribunal wherein reasons have been mentioned by the Tribunal as to why the Appellant would be entitled to only a proportionate deduction on prorata basis. The same is reproduced hereunder.

"16. Now coming to the quantum of the expenditure we have to see that even though the assessee is carrying on business in his individual capacity, he is a beneficiary of the trust as well as trustee of the trust which owned the building. Therefore, there is no much conviction in stating that the landlord of the building was not willing to cooperate with the assessee in undertaking the repairing work of the roof :: Downloaded on - 09/06/2013 16:22:50 ::

12 Income tax Appeal No.513 of 2005 and thereby the assessee alone was constrained to shoulder the entire expenditure. Other tenants also, if at all so warranted, had a duty to share the expenditure. It is the basic duty of the landlord to undertake the repair work. Here in this present case, even though the expenditure has been claimed by the assessee as an individual business man, the trust which owned the building had to repair it. Therefore, it is also possible, not erroneously, to hold that in fact the debited in the books of account of the assessee. Even without going to this unpleasant extent (in fact the assessing officer and CIT(A) has not steered the case in this direction), it is to be seen that the assessee was not bound to bear the entire expenditure. We have also found that the theory of helplessness propounded by the assessee is not convincing for the mere fact that the assessee was the tenant as well as the de facto landlord. Even in the case of a stranger tenant, the incurring expenditure for the entire building of which he is holding only a small portion cannot be treated as an expenditure incurred entirely for the purpose of carrying on his business. In that way, there cannot be a limit for a business expenditure :: Downloaded on - 09/06/2013 16:22:50 :: 13 Income tax Appeal No.513 of 2005 and such a proposition straight away transgresses the legitimacy of section 37 of Income-tax Act 1961. 17 Therefore, we hold that even though the repair expenditure is allowed as revenue expenditure, the assessee is entitled to claim by way of deduction only that proportion computed by the assessing officer on the basis of occupancy of floor area. 18 In result, the contention of the revenue regarding the nature of expenditure is dispelled but the contention regarding proportionate quantum is upheld. As far as the assessee's appeal is concerned, the reverse has happened. The contention regarding the nature is accepted but the contention regarding the quantum is dispelled." The Tribunal, as can be seen from the order extracted above did not accept the theory of helplessness propounded by the Appellant above named and found it to be not convincing on the consideration of the fact that the assessee was the tenant as well as the de facto landlord. The Tribunal, however, observed that even in the case of a stranger tenant, the incurring of the expenditure for the entire building of which he is holding only a small :: Downloaded on - 09/06/2013 16:22:50 :: 14 Income tax Appeal No.513 of 2005 portion cannot be treated as an expenditure incurred entirely for the purpose of carrying on his business. The Tribunal, therefore, though held that the expenditure incurred was revenue expenditure, further held that the assessee would be entitled to claim by way of deduction only that portion propounded by the Assessing Officer on the basis of the occupancy of the floor area. It would also be advantageous to refer to Section 38 of the Income Tax Act which is reproduced hereinunder:

"38 (1) Where a part of any premises is used as dwelling house by the assessee,

(a) the deduction under sub-clause (i) of clause

(a) of section 30, in the case of rent, shall be such amount as the (Assessing) Officer may determine having regard to the proportionate annual value of the part used for the purpose of the business or profession, and in the case of any sum paid for repairs, such sum as is proportionate to the part of the premises used for the purpose of the business or profession;

(b) the deduction under clause (b) of section 30 shall be such sum as the (Assessing) Officer may determine having regard to the part so used.

(2) Where any building, machinery, plant or furniture is not exclusively used for the purposes of :: Downloaded on - 09/06/2013 16:22:50 ::

15 Income tax Appeal No.513 of 2005 the business or profession, the deductions under sub-clause (ii) of clause (a) and clause (c) of section 30 clauses (i) and (ii) of section 31 and (clause (ii) of sub-section (1)) of section 32 shall be restricted to a fair proportionate part thereof which the (Assessing) Officer may determine, having regard to the user of such building, machinery, plant or furniture for the purposes of the business or profession." It is required to be mentioned that the Appellant is occupying the 4th floor flat below the terrace for his residence and as mentioned herein above, the Appellant is the beneficiary of the trust. The Appellant, therefore, is in his dual capacity as tenant as well as the beneficiary of the trust, if that be so, considering Section 38 of the Income Tax Act, the deduction shall be restricted to a fair proportionate part thereof with the Assessing Officer may determine having regard to the user of such building for the purpose of the business or profession. The Assessing Officer, in our view, therefore, though having recorded the factual finding as regards the tenanted premises occupied by the Appellant being used for the business purpose had thereafter, restricted the deduction by calculating the same on prorata basis i.e. qua the premises occupied by the Appellant. We, therefore, do not find any error on part of the Assessing Officer as confirmed by the Tribunal in allowing the deduction calculated on prorata basis. :: Downloaded on - 09/06/2013 16:22:50 :: 16 Income tax Appeal No.513 of 2005 Though the Learned Senior Counsel relied upon judgments in support of his contention that once a finding of fact, as regards the business expediency in incurring expenditure, is recorded. The Tribunal cannot go into the extent of expenditure that is deductible. As can be seen in the said cases the very entitlement to deduction was in question. Such is not the case in the instant matter wherein the assessee has been held to be entitled to proportionate deduction. In our view in the light of Section 38 of the said Act, the order of the Assessing Officer as well as the Tribunal allowing proportionate deduction cannot be faulted with. 13 We have independently examined the issues in the light of various Judgments holding the field. A reading of the said Judgments discloses that the weight of the judicial pronouncements lean towards the view taken by the Tribunal i.e. grant of proportionate deduction. (See: Buland Sugar Co. Ltd. Vs. Commissioner of Income-Tax reported in 1980 Vol 130 ITR page 434, Atlas Cycle Industries Ltd. Vs. Commissioner of Income-Tax, Patiala reported in (1981) Vol 128 ITR page 60) 14 In the light of the aforesaid, we answer the question of law raised in the above Appeal against the Assessee i.e. the Appellant and confirm the Judgment and Order of the Tribunal impugned in the above Appeal. Resultantly the Appeal to stand dismissed. (R.M.SAVANT,J.) (V.C.DAGA,J.)

:: Downloaded on - 09/06/2013 16:22:50 ::