

CALCUTTA HIGH COURT

Commr. of Income-tax

Vs.

Globe Theatres Ltd

Reference No. 9 of 1949

(Harries, C.J. and Chatterjee, J.)

02.09.1949

JUDGMENT

Harries, C.J.

1. This is a Reference made by the Appellate Tribunal, Bombay Bench, under Section 66, Income-tax Act, stating a case for the opinion of this Court upon the following question :

"Whether, on the facts and circumstances of the case, the sum of Rs. 10,000/- paid by the assessee to Madras Publishing House, or any part thereof was an allowable deduction in computing the assessee's income under Section 10, Income-tax Act."

The assessees were Messrs. Globe Theatres Ltd., a public joint stock company, which carry on business as exhibitors of cinema pictures. For the purpose of the business they own certain cinemas and take leases of others and at present they are running seven cinemas in various cities in India.

2. It appears that the assessees in the year 1937 advanced a sum of Rs. 10,000/- to a company in Madras known as the Madras Publishing House Ltd. It seems that this latter company were proposing to build a cinema in Madras and this sum was advanced upon an undertaking given by the Madras Publishing House Ltd., that the assessees would have a lease of the premises. The financial position of the Madras Publishing House Ltd., however, was unsatisfactory and the cinema was never built with the result that the assessees of course never obtained a lease and wrote this sum off as a bad debt.

3. The assessees claim that this sum was an allowable deduction in computing the assessees' income under Section 10, Income-tax Act. But the Income-tax Officer as well as the Appellate Assistant Commissioner did not allow the same as an allowable deduction. On appeal, however,

the Appellate Tribunal came to the conclusion that it was a business expenditure and eventually the order of the Appellate Assistant Commissioner was set aside and the case remanded to him for decision in accordance with law. Application was made to the Appellate Tribunal to state a case upon the question which I have indicated, and the case was stated.

4. The Income-tax authorities, who applied to have the case stated, have appeared through Dr. Gupta who has contended that this payment of Rs. 10,000/- to the Madras Publishing House Ltd. was in the nature of capital expenditure. He has contended that it was a payment made to the Madras Publishing House Ltd. for a lease of the cinema which was to come into existence. It was, in short, a payment as selami for the lease.

5. If the payment was a payment for a lease to be granted to the assesseees, there would be considerable force in Dr. Gupta's contention. But it does not appear that the sum of Rs. 10,000/- was paid as premium or selami for the lease, but on the contrary, was an advance payment of rent under the lease which was to come into existence. If it was an advance payment of rent under a lease to come into existence, there could be no question that it was a sum of money expended by the assesseees in order to earn profits and would come within Section 10 (2) (xv), Indian Income-tax Act and would be an allowable deduction.

6. The facts are not stated as clearly as they might be in the statement of case, but I think, it is clear from the assesseees' letter to the taxing authorities, dated 2-10-1945, which is Ex. B, that this sum was not a payment in the nature of salami or a premium. It is referred to in that letter as a sum of Rs. 10,000/- which was deposited by the assesseees with the Madras Publishing House Ltd. A premium or a selami would not be deposited, but the word is quite appropriate to a payment made by way of advance of rent for a lease which was to come into existence.

7. It appears that the taxing authorities certainly regarded a similar payment received by the assesseees in this light because the assesseees were taxed in respect of a sum of Rs. 9,000/- which had been deposited with them by a sublessee and this deposit appears to have been in the nature of an advance of rent made by the sub-lessee to the assesseees. In short, the assesseees treated the payments made by them and the payments received by them in connection with these leases as ordinary payments in the course of business and actually included the payment of Rs. 9,000/- to them as part of their receipts.

8. The fact of course that the assesseees were taxed on this sum of Rs. 9,000/- does not conclude the matter as they may have been wrongly assessed on that sum. However, it does show what was the true nature of these payments. The payment, as I have said, appears to have been made not as a premium but as an advance payment of rent made to assist the Madras Publishing House Ltd. to erect and complete the cinema. If it was such a payment, it is conceded that the amount would have to be allowed as a deduction in computing the assesseees' income.

9. For the reasons which I have given the question submitted must be answered in the affirmative. The assessee is entitled to the costs of these proceedings. Certified for two Counsel.

Chatterjee, J.

10. I agree.

Answered in the affirmative.