

*Before S. J. Vazifdar, CJ & Avneesh Jhingan, J.*

**PR. COMMISSIONER OF INCOME TAX-I CHANDIGARH—**  
*Appellant*

*versus*

**M/S SRBS ENTERTAINMENT, CHANDIGARH—Respondent**

**I.T.A. No.280 of 2016**

January 18, 2018

***Income Tax Act, 1961—S. 37(1)—Business Expenditure—Premises on lease to keep furniture and other equipment for catering in order to maintain and run community centre—Amount of rent paid through cheque of which TDS deducted—Business faced difficulty in commencement—Expenses towards rent allowed by CIT—Not open to the department to suggest lease should have been terminated—Clear case of business expenditure.***

*Held* that merely because there was some difficulty faced by the assessee in commencing the use of the premises it does not follow that the expenses claimed were not for the purpose of the assessee's business. If the expected fruits are not reaped from a business proportion, it will not be a basis to challenge the business expediency. Even if there was a delay in getting the electricity connection, that may be a result of non-fulfilment of contractual obligations, for which the assessee can claim damages. It would not be open for the department to suggest that in such circumstances, the lease should have been terminated. It is a business decision to be taken by the assessee. It is not the case of the department that the expenses have not been incurred or that they were made under an understanding camouflaged as a lease agreement.

(Para 10)

Urvashi Dhugga, Senior Standing Counsel,  
*for the appellant.*

Radhika Suri, Senior Advocate, with  
Manpreet Singh Kanda, Advocate,  
*for the respondent.*

**AVNEESH JHINGAN, J.**

(1) This is an appeal against the order of the Income Tax

Appellate Tribunal confirming the order of the CIT (Appeals) whereby the order of the Assessing Authority disallowing the lease rent paid by the assessee was quashed.

(2) The matter pertains to the assessment year 2010-11.

(3) According to the appellant, the following substantial questions of law arise in this appeal:-

(i) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is right in deleting the addition of Rs.72,00,000/- by holding that if the payment for lease rental has been made by cheque after deducting the due TDS, then genuineness & business expediency of any expenditure stands established?

(ii) Whether on facts and circumstances of the case and in law, the Hon'ble ITAT is right in deleting the addition of Rs.72,00,000/- by ignoring the fact that the assessee could not prove the business expediency of expenses when the said premises had not been used for the purpose of business?

(4) The Assessing Officer finalised the assessment under Section 143 (3) of the Income Tax Act, 1961 (for short, 'the Act'), vide order dated 28.02.2013. The Assessing Officer doubted the payment of lease rent and disallowed the payment of Rs. 72,00,000/- as lease rent on the ground that the assessee did not submit proof regarding the use of the premises for business purposes.

(5) The CIT (Appeals) allowed the assessee's appeal vide order dated 31.12.2014. The CIT (Appeals) held as under :-

“3.3 I have considered facts of the issue. The appellant firm had taken the premises at Mohali on rent (for which lease rental of Rs.72,00,000/- has been claimed) with a view to generate revenue through catering and banqueting to maintain and run the community centre and to expand business. The appellant had taken these premises on rent to keep its furniture and other bulky tentage and catering equipments. Two the partners of the firm had gone to England and they could not return back in time because of which business did not take off adequately. According to the appellant, it got electricity connection almost after eight months from the date of signing of agreement, which was

the main reason for delay and going back of partners for sometime to England. The Assessing Officer disallowed the amount for the reason that the appellant did not submit any documentary evidence to support its reply and did not give any evidence regarding business use of the premises. The amount of lease rental was paid through cheques on which tax had been duly deducted at source. The fact of delay in getting the electricity connection cannot be denied, which also could have been the reason for being not able to start the business, since it is not possible to carry on the business without electricity. In order to reduce losses, the appellant had given a part of premises on rent to Ms. Madhu Ahuja at the end of the year and this also proves the genuineness of appellant's case on the issue. It is, therefore, held that the Assessing Officer was not right in disallowing the amount of lease rental. It may also be mentioned that the Assessing Officer has disallowed the amount u/s 40A(2)(a) of the Act, but the amount was not paid to any person covered u/s 40A (2) (b) and so the observation of the Assessing Officer in this regard is not correct. In any case, since I have held that the appellant is eligible for deduction of this amount, this finding of the Assessing Officer is not material. The ground of appeal taken against the addition made is accordingly allowed.”

(6) The Tribunal confirmed the reasonings given by the CIT (Appeals) and dismissed the appeal by the impugned order dated 04.03.2016. The order is based on an appreciation of the facts. The conclusion is certainly a possible one. It cannot be said to be perverse or irrational. The appeal therefore does not raise a substantial question of law.

(7) The assessee was carrying on the business of running a Community Centre Club at Silver City Zirakpur. In order to expand its business and to venture in the business of catering and banqueting, a shed was taken on lease for keeping the furniture such as sofas, bulky tentage and catering equipment. There were various hiccups in starting the new business and it included the delay in getting electric connection by almost eight months. As the business could not be started, part of the said property taken on lease was given on rent to one Ms. Madhu Ahuja. In all this, two partners of the firm went to England who had to return shortly for looking after the business but due to their family

problem and business compulsions, they could not return within a reasonable time. Admittedly, the lease rent was paid through cheque and even TDS as required under the Act was duly deducted. Both the Appellate Authorities took into consideration all these factors and held that the claim of lease money paid cannot be denied. The conclusion reached is logical.

(8) Question No.1 is framed incorrectly. The question has been worded to suggest that the authorities held that if the payment of lease rent has been made by cheque and TDS has been deducted, the genuineness of the same and the business expediency stands established. Indeed mere payment by cheque purportedly towards lease rent and the deduction of TDS would not establish a case for deduction. However, the Appellate Authorities have not allowed the claim merely on the basis of payment being made by cheque and TDS having been deducted. The facts in entirety have been considered and thereafter, a conclusion has been arrived at that it was a business expenditure which was genuinely made towards payment of lease rent.

(9) Question No.2 challenging the deletion of addition made as the assessee failed to prove the business expediency as the said premises was not used for business purposes is not a question of law, much less a substantial question of law.

(10) Merely because there was some difficulty faced by the assessee in commencing the use of the premises it does not follow that the expenses claimed were not for the purpose of the assessee's business. If the expected fruits are not reaped from a business proposition, it will not be a basis to challenge the business expediency. Even if there was a delay in getting the electricity connection, that may be a result of non-fulfilment of contractual obligations, for which the assessee can claim damages. It would not be open for the department to suggest that in such circumstances, the lease should have been terminated. It is a business decision to be taken by the assessee. It is not the case of the department that the expenses have not been incurred or that they were made under an understanding camouflaged as a lease agreement.

(11) The appeal raises questions of fact. No substantial question of law arises. There is no warrant for interference with the order passed by the Tribunal.

(12) The appeal is, therefore, dismissed.

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*Sanjeev Sharma, Editor*