

**Commissioner of Expenditure-tax Vs. Laxmipat Singhanian**

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**SooperKanoon Citation :** [sooperkanoon.com/466289](http://sooperkanoon.com/466289)

**Court :** Allahabad

**Decided On :** Feb-09-1972

**Reported in :** [1973]91ITR459(All)

**Judge :** S.N. Dwivedi and ;R.L. Gulati, JJ.

**Acts :** Expenditure Tax Act, 1957 - Sections 2, 4 and 4(1)

**Appeal No. :** Miscellaneous Expenditure-tax Reference No. 602 of 1968

**Appellant :** Commissioner of Expenditure-tax

**Respondent :** Laxmipat Singhanian

**Advocate for Def. :** V.B. Upadhya, Adv.

**Advocate for Pet/Ap. :** R.R. Misra, Adv.

**Judgement :**

**R.L. Gulati, J.**

1. This is a reference under Section 25(1) of the Expenditure-tax Act, 1957, at the instance of the Commissioner of Expenditure-tax, U.P., Lucknow.

2. The reference arises out of assessments under the Expenditure-tax Act for the assessment years 1958-59 and 1959-60. The assessee, Laxmipat Singhanian, was at the material time a financial adviser to a limited company known as the J. K.

Jute Mills Co. Ltd. On April 10, 1956, that company passed a resolution that the assessee should be allowed free furnished residential accommodation in its house known as J. K. House, at 12, Alipur Road, Calcutta. The assessee was not to receive any other remuneration. While making the assessment under the Expenditure-tax Act, for the two years in question, the Expenditure-tax Officer included in the total expenditure of the assessee the following two items amongst others.

1. Rs. 19,440, being the annual letting value of rent-free residence provided to the assessee by the J. K. Jute Mills Company Ltd.
2. Rs. 5,800, being taxes, insurance and other miscellaneous expenses in respect of the aforesaid residential accommodation.

The assessee disputed these two items and the matter eventually went before the Income-tax Appellate Tribunal. The Tribunal held that the two items did not amount to 'expenditure' and as such deleted them from the total expenditure for the two assessment years. The department is aggrieved and at its instance the following question of law has been referred by the Tribunal for our opinion :

' Whether, on the facts and in the circumstances of the case, the sums of Rs. 19,440 and Rs. 5,800, being the A. L. V. of the rent free 'accommodation provided to the assessee and the taxes, insurance premium other miscellaneous expenditure respectively paid by M/s. J. K. Jute Mills Co. Ltd. were rightly held to be not an expenditure which could be included in the expenditure-tax assessment of the assessee under Section 4(i) of the Expenditure-tax Act '

Section 3 is the charging section under which every individual or a Hindu undivided family has to pay tax in respect of the expenditure incurred in the previous year. The term 'expenditure' has been defined in Section 2(h) as follows :

' Expenditure means any sum in money or money's worth, spent or disbursed or for the spending or disbursing of which a liability has been incurred by an assessee, and includes any amount which under the provisions of this Act is

required to be included in the taxable expenditure. '

The definition is in two parts. The first part covers the expenditure directly incurred by the assessee. The second part covers any expenditure which though not incurred by the assessee, yet may under the provisions of the Act be required to be included in his expenditure. That kind of indirect expenditure is to be found in Section 4 Clause (i) of Section 4 reads :

' Unless otherwise provided in Section 5, the following amounts shall be included in computing the expenditure of an assessee liable to tax under this Act, namely :--  
(i) any expenditure incurred, whether directly or indirectly by any person other than the assessee in respect of any obligation or personal requirement of the assessee or any of his dependants to the extent to which the amount of all such expenditure in the aggregate exceeds Rs. 5,000 in any year. '

It is under this provision that the two items in dispute are sought to be included in the total expenditure of the assessee. Now, this provision applies where a person other than an assessee incurs an expenditure for or on behalf of the assessee or for his benefit. The whole question, therefore, is as to whether the J. K. Jute Mills Co. can be said to have incurred any expenditure for the benefit of the assessee in providing him free and furnished residential accommodation. The house at Calcutta is the capital asset of the company. The use of the capital asset by itself does not amount to an expenditure. A person who owns a house cannot be said to be incurring an expenditure to the extent of the annual letting value of the house. The company could be said to have incurred an expenditure, if it had provided to the assessee a rented accommodation and had undertaken to pay the rent thereof. But providing its own house for free residence cannot be said to be an expenditure by the company. As has been rightly observed by the Tribunal, expenditure on a capital asset is incurred when the capital asset is acquired or built. Thereafter the use of that asset does not entail any recurring expenditure. In the instant case what can be said at the most is that the company is forgoing the rent in respect of its house at Calcutta which it has provided to the assessee free of rent. But, forgoing rent does not amount to incurring expenditure. We are, therefore, of opinion that the Tribunal was right in holding that the sum of Rs.

19,440 being the annual letting value of the house at Calcutta could not be treated as an item of expenditure.

3. The same is the position with regard to the other item of Rs. 5,800. That item is comprised of the insurance premium and the taxes in respect of the Calcutta house. The company has to pay taxes and insurance in respect of the house whether or not somebody lives in it. It pays such charges in its capacity as the owner of the house. By no stretch of imagination can it be said that the company is paying premium and insurance charges for the house for and on behalf of the assessee or for his benefit.

4. We accordingly answer the question in the affirmative in favour of the assessee and against the department. The Commissioner of Expenditure-tax shall pay to the assessee the costs of this reference which we assess at Ps. 200.

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