

Bihar Police Building Construction Corporation Pvt. Ltd

Civil Writ Jurisdiction Case No.1198 of 2023

FORUM

Patna High Court

ORDER DATE

25 Jul 2023

NOTE TYPE

Source extract

01 CONCLUDING COURT PASSAGE - SOURCE EXTRACT

In fact, the saving in expenditure by reason of the low rent made also a revenue expenditure and not a capital expenditure. Ayesha Hospitals (supra) was also a case in which a Private Limited Company was running a hospital in a leased premise, on which premise maintenance was carried out. The Assessing Officer treated it as a capital expenditure. The High Court held that though the building belonged to the Directors, the owners were separate entities returning the rental income and also paying tax on the profits arising out of the hospital. Following Madras Auto Service (P) Ltd., it was held that expenditure incurred on construction of a leased premises by the Assessee was deductible as revenue expenditure. 5. In the above case, the Assessee had claimed depreciation at the rate of 50% on the ground that the building was a temporary structure. In fact, as per Rule 5 read with appendix 1 of the Income Tax Rules, 1962. Purely temporary erections such as wooden structures are entitled to 100% depreciation and as has been found in the aforesaid judgment, if it is a temporary structure, there could even be a claim raised as a revenue expenditure, however, in the present case the claim was of 50% depreciation, which cannot be allowed. In fact, appendix 1 provides for only 10% depreciation for buildings other than used for residential purpose and not covered by sub- items 1 and 3. In the above circumstances, there is absolutely no valid claim for the assessee to obtain a 50% depreciation. 6. We find absolutely no reason to interfere with the order of the Assessing Officer especially in a petition under Article 226. 7. The writ petition stands dismissed.

SOURCE & VERIFICATION

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