

(2002) 09 MAD CK 0233

Madras High Court

Case No: T.C. No. 298 of 1997 18 September 2002

Commissioner of Income Tax

APPELLANT

Vs

South India Viscose Ltd.

RESPONDENT

Date of Decision: Sept. 18, 2002**Citation:** (2004) 134 TAXMAN 727**Hon'ble Judges:** R. Jayasimha Babu, J; K. Raviraja Pandian, J**Bench:** Full Bench**Advocate:** T. Ravikumar, for the Revenue P.P.S. Janardhana Raja, for the Assessee, for the Appellant;

Judgement

R. Jayasimha Babu, J.

The question referred to us, at the instance of the revenue, for our consideration is as follows :

"Whether, on the facts and in the circumstances of the case and having regard to the provisions of Explanation (ii) to the second proviso to section 37(4) of the Income Tax Act, the Tribunal is right in law in holding that lease rent paid for guest house cannot be disallowed u/s 37(4) of the Income Tax Act, 1961?"

2. The assessment year is 1984-85.

3. The rent paid by the assessee for the guest house maintained by it having been allowed by the Tribunal, although it had been disallowed by the Commissioner and the assessing officer, this reference has been made.

4. Section 30 of the Act deals with rent, rates, taxes, repairs and insurance for buildings used for the purpose of business or profession. That the guest house is used for the purpose of the business is not in dispute. Section 37 under the heading "General", in sub-section (4), as it stood during the relevant assessment year, in clause (i) thereunder, provides that no allowance is to be made in respect of expenditure incurred by the assessee after 28-2-1970, on the maintenance of any

residential accommodation in the nature of a guest house, "Maintenance" is not defined in that provision. The term "maintenance" normally refers to keeping a thing in the condition that it was and keeping it in a condition that enables the thing to be used in the way in which it was intended to be used. The rent paid for the guest house, in the absence of any other indication in section 37(4)(1), cannot be regarded as part of the maintenance, especially when rent is specifically dealt with in another section-section 30 which expressly provides for deduction of such rental.

5. Our answer to the question, therefore, is in favour of the assessee and against the revenue.