TR 147

Facts

M and K referred to hereunder as “the companies” are two companies which have the same beneficial owner. Both companies intend to enter into a lease agreement with P for a period of 10 years and incur major expenses of more than Rs 20 m in respect of accommodation of new offices.

The lease agreement between the landlord and the lessee will provide that all the assets will be transferred to the landlord upon the termination of the occupation of the premises.

The companies intend to enter into an agreement so that only one company will bear all costs initially, and then split the costs and apportion the assets equally. The estimated breakdown of the cost is as follows:

	Rs
Ceiling	1,500,000
Drywall Partitioning	2,500,000
Flooring	1,800,000
Lighting	500,000
Air Conditioners	2,000,000
Electrical and data wiring	1,800,000
IT	3,500,000
Flush doors	450,000
Decoration	500,000
Move out cost	500,000
Furniture	5,000,000
TOTAL	**20,050,000**

Points at issue

1. Whether the assets can be split equally and capital allowance can be claimed by companies on the different cost components at the following rates:

	Capital Allowance
Ceiling	5%
Drywall Partitioning	5%
Flooring	5%
Lighting	20%
Air Conditioners	35%
Electrical and data wiring	20%
IT	50%
Flush doors	20%
Decoration	20%
Furniture	20%

2. Whether the companies will be entitled to a balancing allowance in the event that the companies leave the premises before the end of the lease term and transfer the assets to the landlord?

Ruling

1. It is confirmed that M and K will be entitled to claim capital allowances on that part of the capital expenditure attributable to each of the company as per the terms of the agreement, provided the expenditure is incurred exclusively in the production of gross income.

   The rate of annual allowance will be in accordance with the Second Schedule of the Income Tax Regulations 1996. However, the expenditure incurred on the components forming part of the building, such as ceiling, drywall partitioning, flooring, lighting, electrical and data wiring, flush doors and decoration will constitute a premium payable on property. Consequently, annual allowance will be allowed thereon at the rate of 5% in accordance with Item 8 of the Schedule.

2. In the event the companies leave the premises before the end of the lease term and transfer the assets to the landlord there would be an adjustment which would result in either a balancing charge or a balancing allowance in accordance with the provisions of Section 24(5)(b) of the Income Tax Act.