

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 21st May, 2012
% *Date of Decision: 30th May, 2012*

+ **ITA No.351/2012**
ITA No.352/2012
ITA No.353/2012
ITA No.354/2012
ITA No.355/2012
ITA No.356/2012
ITA No.358/2012
ITA No.360/2012

CIT

.....Appellant

Through: Mr. Sanjeev Rajpal, Sr. Standing
Counsel.

Versus

SUNBEAM AUTO LTD.

....Respondents

Through: Ms. Husnal Syali and Mr. Rahul
Sateeja, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

R.V. EASWAR, J.:

These are eight appeals filed by the Revenue and they relate to the assessment years 2000-01, 2002-03 to 2006-07 and 2008-09.

2. We may take ITA No.351/2012 which relates to the assessment year 2004-05 as the lead matter. The assessee is engaged in the manufacture of die-casted components for automotive manufactures that is, two wheelers and four wheelers. For manufacturing these components specific moulds are required according to the design and physical properties. The manufacturing process and the parameters are accordingly decided. The assessee has in-house moulds manufacturing facility. In case the in-house facility is not able to fulfill the requirements, the moulds are purchased from outside. The requirement of moulds is very high having regard to the number of components produced by the assessee. The moulds have to withstand very high pressure molten metal which is poured inside the cavity in the mould in temperature ranging 700 degree Celsius. Due to constant use of the dies and moulds, they are subject to heavy wear and tear.

3. Having regard to the nature of the dies and moulds as stated above, it was the practice of the assessee to debit the expenditure incurred on account of replacement of the moulds and dies to the profit and loss account as revenue expenditure. The Assessing Officer took the view that the expenditure was capital in nature since the

moulds and dies conferred an enduring benefit upon the assessee. He further noted that the assessee was incurring heavy expenditure on repairs to plant and machinery and was also claiming substantial amount of depreciation. According to him the claim of the assessee that the moulds and dies are allowable as revenue expenditure was not bona fide as it had been claimed in addition to the heavy repair expenditure and depreciation relating to the plant and machinery. He observed that the claim for deduction of the expenditure on account of replacement and moulds and dies was not guided by any commercial expediency. In this view of the matter he held that the expenditure brought an enduring advantage to the assessee and therefore disallowed the same as capital in nature.

4. The CIT (Appeals) noted that the assessee was manufacturing the automotive parts since 1986 and since then was consistently following the practice of debiting the cost of replacement of moulds and dies as revenue expenditure and that in the assessment year 2001-02, the Tribunal upheld the claim in its order passed in ITA No.1122/Del/2005. Following the order of the Tribunal cited above he held that dies and tools were allowable as revenue expenditure.

5. The revenue carried the matter in appeal before the Tribunal which held that the moulds and dies do not have any longevity and therefore they have to be replaced frequently. Such replacement only ensured production of the same quality of parts. They have to be made by the assessee in-house on the basis of specific orders by car

and motorcycle manufacturers and when their life is exhausted they have to be destroyed in order to prevent misuse or fakes. The Tribunal felt that in these circumstances the assessee had not obtained any enduring advantage. The expenditure was therefore directed to be allowed as revenue expenditure.

6. We do not think that any substantial question of law on this aspect/issue arises from the decision of the Tribunal. It has been factually found and that too concurrently by the CIT (Appeals) and the Tribunal that the purchase of dies and moulds did not bring into existence any permanent or enduring advantage to the assessee. It has been found that due to continuous use they wear out fast and further any minor defect in the mould on account of continuous use such as chipping or cracking would render them useless. In any case the longevity of the moulds and dies is not substantial as held by the Tribunal and they have to be replaced frequently to ensure quality of the product. Moreover, the moulds have to be produced to suit the requirements of the particular customer and after the order is met, they become useless and ultimately have to be destroyed to prevent misuse or manufacture of fakes. It has also been found by the appellate authorities that the expenditure on replacement of dies and moulds was earlier allowed by the income tax authorities as revenue expenditure. These are factual findings recorded by the Tribunal which are not disputed before us by the revenue on the basis of any evidence or material. It is well settled that any expenditure on

replacement or repairs to plant and machinery which does not bring into existence any enduring or permanent advantage in the capital field is allowable as revenue expenditure. The Tribunal has only applied this settled legal position to the undisputed facts found. Therefore no substantial question of law arises for our consideration. The appeals on this point are accordingly dismissed.

7. In respect of ITA No.353 and 355 of 2012 for the assessment year 2006-07 and 207-08 there is one more issue. In these years the assessee claimed that the loss of the 100% export oriented unit covered by Section 10B of the Income Tax Acts, 1961 can be adjusted against the other business income. Taking the assessment year 2006-07, the assessee incurred a net loss of ₹1,36,87,803/- in the 100% export oriented unit which was eligible for the benefit of Section 10B. In the return originally filed this loss was shown separately and was claimed to be carried forward to the subsequent years. The loss was certified by the audit report in Form No.56G. In the revised return filed on 17.07.2007, the loss mentioned above was sought to be adjusted against the other business income of the assessee. This claim was not allowed by the Assessing Officer on the footing that since Section 10B is placed under the Chapter III (“Income not forming part of the total income”), the source is exempt from tax and therefore the loss also cannot be considered and adjusted against the other business income. The view taken by the Assessing Officer was reversed by the CIT (Appeals) holding that the loss can be adjusted in the manner

claimed by the assessee. The revenue carried the matter in appeal to the Tribunal which upheld the view taken by the CIT (Appeals). The Tribunal noted that the amendment made to Section 10B(1) of the Act w. e. f. 01.04.2000 was noticed by the CIT (Appeals). It is further noted that the issue was covered by para 20 of the Circular No.7 dated 05.09.2003 issued by the CBDT [(263) ITR (ST.) 77]. In this view of the matter the appeal of the revenue on this point was rejected for both the years.

8. After hearing the learned Standing Counsel for the income tax department, we issue notice to the respondent on this point.

Issue notice in ITA No.353 and 355/2012 returnable on _____ limited to the question relating to Section 10B of the Act.

ITA Nos.351, 352, 354, 356, 358 and 360/2012 are dismissed.

R.V.EASWAR, J

SANJIV KHANNA, J

MAY 30, 2012

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