

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.03.2015

CORAM

**THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH**

T.C.A. NO. 1192 OF 2007

Autolec Industries Ltd.
(Now Sundaram Fasteners Ltd.)
98A, 7th Floor, Dr. Radhakrishnan Salai
Mylapore, Chennai 600 004. .. Appellant

- Vs -

The Joint Commissioner of Income Tax
Special Range V
Chennai 600 034. .. Respondent

Appeal filed under Section 260A of the Income Tax Act against the order dated 13.10.06 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, made in ITA No.2133/Mds/2004.

For Appellant : Mr. P.J.Rishikesh

For Respondents : Mr. T.Ravikumar

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in dismissing the appeal filed by it, the assessee/appellant is before this Court by filing the present appeal. This Court, vide order dated 9.2.08, while admitting the appeal,

framed the following substantial questions of law for consideration :-

"i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in treating the expenditure on replacement of plant and machinery as capital in nature?

ii) Whether on the facts and in the circumstances of the case, the Tribunal is correct in not allowing depreciation at 100% on the specified items?"

2. The facts, in a nutshell, are as hereunder :-

The appellant is in the business of manufacture of automobile components. In respect of replacement of plant and machinery, which is a part of the continuous manufacturing system, the appellant claimed a sum of Rs.71,07,022/= as revenue expenditure and further claimed 100% depreciation on certain items on the ground that all the items are energy saving devices. The Assessing Officer, however, held against the assessee/appellant, against which the appellant moved the CIT (Appeals), who on consideration of the matter, allowed the appeal in part. Aggrieved against the said portion of the order, which went against it, the appellant/assessee preferred appeal to the Tribunal, which was dismissed, confirming the order of the CIT (Appeals), against which the present appeal has been filed.

3. Heard the learned counsel appearing for the appellant/assessee and

the learned standing counsel appearing for the respondent/Department and perused the materials available on record as also the orders passed by the authorities below.

4. Insofar as the 2nd substantial question of law is concerned, we find that it is mostly in the nature of facts as to whether certain equipments are entitled to 100% depreciation. To be more clear on this aspect, the relevant portion of the order of the original authority dated 27.3.01, relating to equipments, is extracted hereinbelow for better clarity:-

"3. At the time of hearing the assessee also claimed that equipments to the extent of Rs.20,63,694/= were entitled to 100% depreciation as they were energy saving/Air/Water pollution control equipments. It was pointed out that except for the claim at this late stage in march what other proof they could produce to identify such equipments were energy saving equipments and listed in Appendix I of Rule 5. This claim was not made while filing return of income, nor while filing details. Suddenly, the assessee company comes in March and claims that this equipments is also eligible for 100% depreciation. The assessee has no convincing support to sustain its claim. Many of the items are entitled to normal depreciation only, which was claimed and allowed. Hence, this claim which was not reflected in the Annual Report given to shareholders and Company Law Board is clearly an afterthought with an intention to avail greater benefit. Moreover, the names of purchase invoices differ from what the assessee claims to have entitled for 100% depreciation. So, the same is rejected."

5. The assessee pursued the matter in appeal and the CIT (Appeals) vide order dated 24.6.04, justified the disallowance of 100% depreciation as and held as follows :-

"I have carefully considered the assessing officer's observation as well as the Appendix-I relating to depreciation. I agree with the observation made by the Assessing Officer except for 2 items, viz., Micro Processor based pressure indicating system of Rs.1,13,624/= and voltage stabilizer Rs.6,700/-. According to me, first is covered under the Entry III (3) (iii)(B)(c) and the second item is covered under III (3)(iii)(E)(c). I, therefore, direct the assessing officer to allow 100% depreciation to the appellant only on these two items. Therefore, the appellant partly succeeds on this ground."

6. The Tribunal, on appeal by the assessee/appellant, held in favour of the Revenue, affirming the order of CIT (Appeals), the relevant portion of which is extracted hereunder :-

"4. The next issue raised pertains to claim of 100% depreciation on the following assets:-

- a) Micro Processor based carrier frequency amplifier;*
- b) Oil Filtration Systems;*
- c) Online sinewave UPS systems and battery for the same;*
- d) Variable Frequency Drive*

4.1 On this issue, as regards item No.4 (1), the lower authorities have given a finding that machinery installed by the assessee are not covered under Item III (3)(B) of the table of depreciation rates. Similarly, as regards the rest of

the items, a finding has been given that they are not covered under item III (3)(E) of the said table.

4.2 The learned Departmental Representative submitted that these findings of the lower authorities are on firm footing and have not been controverted by the assessee by any cogent explanation.

4.3 Upon a careful consideration of the issue, we are of the considered opinion that the learned Commissioner of Income Tax (Appeals) on this issue has taken a correct view. Hence, we uphold his orders."

7. It has been time and again held by the Supreme Court in a catena of decisions that concurrent findings of fact by the lower authorities on factual issues should not be reappreciated on appeal, unless it is shown to be ex facie perverse. The Supreme Court in ***Ghisalal – Vs - Dhapubai (2011 (2) SCC 298)*** has held that unless the findings are ex facie perverse, concurrent findings should not be interfered with. The relevant portion of the order is extracted hereunder :-

"The consideration of this issue deserves to be prefaced with an observation that this Court is extremely loath to interfere with the concurrent finding of fact recorded by the courts below more particularly when such finding has been approved by the High Court. In such matters, interference is warranted only when this Court is convinced that the finding is ex facie perverse. A finding of fact can be treated as perverse if it is based on no evidence or there is total misreading of pleadings and/or evidence of the parties or the finding is based on unfounded assumptions or conjectures."

8. In yet another decision in ***Chandra Bihari Gautam – Vs - State of Bihar (2002 (9) SCC 208)***, the Supreme Court has held as under :-

5. Time and again it has been held by this Court that no interference would be made with the concurrent finding of fact based on pure appreciation of evidence even if this Court was to take a different view on the evidence. The Court will normally not enter into reappraisal or the review of evidence unless the trial court or the High Court is shown to have committed an error of law or procedure and the conclusions arrived at are perverse. This Court cannot enter into the credibility of the evidence with a view to substitute its opinion for that of the High Court. This Court may interfere where on proved facts wrong inferences of law are shown to have been drawn. It needs to be emphasised that this Court is not a regular court of appeal to which every judgment of the High Court in a criminal case may be brought up for scrutinising its correctness. It is only in a rare or exceptional case where there is some manifest illegality or grave or serious irregularity that the Court would interfere with such findings of fact. In this regard reference may be made to the judgments of this Court in Duli Chand v. Delhi Admn., Ramaniklal Gokaldas v. State of Gujarat, Dalbir Kaur v. State of Punjab and Ramanbhai Naranbhai Patel v. State of Gujarat, etc.”

9. Keeping the above position of law in mind, even a cursory look at the order passed by the Tribunal would manifestly reveal that the Tribunal, on the issue of depreciation, after going through the orders of the lower

authorities was of the view that the view taken by the CIT (Appeals) is correct on facts. Such being the factual scenario, in the absence of any specific material on the legal issue, disputing the manner in which the issue of depreciation was considered, we are not inclined to go into issues on facts as projected by the appellant/assessee. Accordingly, ***the 2nd substantial question of law is answered in favour of the Revenue and against the assessee.***

10. Insofar as the first question of law is concerned, learned counsel appearing for the appellant pleads that the issue should be remanded back to the CIT (Appeals) to consider whether replacement of plant and machinery would be a case of revenue expenditure or capital expenditure. Similar issue, it appears, has been considered by this Court in the case of ***Super Spinning Mills Ltd. - Vs - Asst. Commissioner of Income Tax (2013 (357) ITR 720 (Mad))***, wherein, this Court, following the decision of the Supreme Court in ***CIT - Vs - Sri Mangayarkarasi Mills (2009 (315) ITR 114 (SC))***, remanded the matter back to the CIT (Appeals) for consideration and pass detailed orders. The relevant portion is extracted hereinbelow for better clarity :-

"17. Even though the assessee has furnished list of items chart, the data which are available before us were not available before any of the appellate authorities for coming to the right conclusion herein. Thus, with no details available as

stated in the case of CIT v. Ramaraju Surgical Cotton Mills reported in [2007] 294 ITR 328 (SC), the decision of the Tribunal cannot be held as based on any material data necessary for considering the claim one way or the other. Hence, the proper course herein is to set aside the order of the Income-tax Appellate Tribunal and remit the matter back to the Commissioner of Income-tax (Appeals) for de novo consideration.

18. Keeping in view the law declared by the apex court in the case of CIT v. Ramaraju Surgical Cotton Mills reported in [2007] 294 ITR 328 (SC) and in the case of CIT v. Sri Mangayarkarasi Mills P. Ltd. reported in [2009] 315 ITR 114 (SC) ; [2009] TIOL-86-SC-II, the Commissioner of Income-tax (Appeals) shall grant an opportunity to the assessee to state its case in a proper perspective and decide on the issue as to whether the expenditure, in effect, could be treated as "revenue expenditure".

19. We direct the Commissioner of Income-tax (Appeals) to pass a detailed order on the impact of the replaced material as well as the functioning of the machinery after hearing the assessee in detail, who, we hope, would extend all co-operation before the Commissioner of Income-tax (Appeals) and furnish the materials for arriving at a proper conclusion."

11. Following the abovesaid ratio, without going into the first substantial question of law as raised above, this Court is of the considered opinion that the matter has to be remanded back to the CIT (Appeals) for reconsidering the issue. Accordingly, on the first issue, the matter is remanded back to the CIT (Appeals) for consideration and passing detailed

orders.

12. In the result, the appeal is partly allowed by way of remand. However, in the circumstances of the case, there shall be no order as to costs.

(R.S.J.) (R.K.J.)

17.03.2015

Index : Yes/No

Internet : Yes/No

GLN

To

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Chennai 600 034.
2. The Income Tax Appellate Tribunal
'A' Bench, Chennai.

R.SUDHAKAR, J.
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R.KARUPPIAH, J.

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