

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.01.2017

Coram:

The Hon'ble Mr.Justice HULUVADI G.RAMESH

AND

The Hon'ble Dr. Justice ANITA SUMANTH

TAX CASE APPEAL No.839 of 2016

Commissioner of Income Tax,

Chennai

.. Appellant

Versus

Savera Industries Limited,

No.146, Dr.Radhakrishnan Salai,

Chennai 600 004.

.. Respondent

Prayer: Tax Case Appeal filed under Section 260A of Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "C" Bench, dated 11.11.2015 in ITA No.835/mds/2015 against the order of the Principal Commissioner of Income Tax-6, Chennai 34 dated 02.03.2015 in C.No 6119(10)/CIT-6/2014-2015, which was filed against the assessment order of the Assistant Commissioner of Income Tax company Circle VI(1) dated 25.04.2012, vide G.R.No/PAN/sa/174/AAECS9541D for the assessment year 2010-2011.

For Appellant .. Mr.J. Narayanasamy

For Respondent .. Mr.Sandeep Bagmar.R

JUDGMENT

(Judgment of this Court was delivered by ANITA SUMANTH, J.)

This Department Tax Case (Appeal) relates to AY 2010-11 and raises the following substantial questions of law:

'Whether on the facts and in the circumstances of the case the tribunal was right in setting aside the revision order passed by the CIT u/s.263 of the Income Tax Act.

Whether on the facts and in the circumstances of the case the tribunal was right in holding that the CIT had merely set aside the orders of the assessment without any adverse finding about the claims of the assessee without appreciating the fact that the CIT had clearly given adverse findings holding that the assessee's claims were allowed in the assessment without proper verifications about the nature of expenditure and without application of mind?'

2. The facts in issue are as follows:

The assessee/respondent is a company that owns and manages a four star hotel. In respect of assessment year 2010-11, an order of assessment in terms of the Income tax Act 1961 (in short 'Act') was passed under scrutiny on 25th April 2012. In the course of assessment, various queries were raised by the assessing authority in relation to issues that arose from an examination of the return of income. A notice under section 143 (2) dated 05.09.11 as well as a questionnaire under section 142 (1) dated 07.02.12 were issued. Specific queries were raised with respect to expenditure incurred on renovation amounting to Rs.1,09,81,000/- treated as deferred revenue expenditure and preliminary and pre-operative expenditure of an amount of Rs.9,48,000/- claimed in the computation of income. The assessee filed detailed replies on 09.02.12, 27.02.12, 05.03.12 and 11.02.12, explaining the claims and filing material in support of thereof. Account copies were filed setting out the nature and details of the expenses, the narration in respect of each item of expenditure and details of the entities to which payments were made.

3. Upon a detailed consideration of all the particulars filed, the assessing authority accepted the claims and order of assessment dated 25.04.12 thus came to be passed after due application of mind.

4. While this is so, the Commissioner of Income Tax (in short 'CIT') proposed to exercise jurisdiction under section 263 of Income Tax Act, being of the view that the claims of expenditure had not been examined by the assessing officer and the order of assessment was thus erroneous and prejudicial to the interests of revenue. A notice dated 28.01.15 was issued calling upon the assessee to show cause why the expenditures incurred on renovation as well as deferred revenue expenditure not be disallowed and proposing to set aside the order of assessment for re-computation of the total income of the assessee. Despite the assessee bringing to the notice of the CIT the details filed before the Assessing Officer in regard to the claim of expenditures, the proposal was confirmed and the

assessment set aside to be re-done after proper verification of the claims by order of revision dated 02.03.15.

5. The order of the CIT was assailed before the Income Tax Appellate Tribunal, (in short 'Tribunal') which, vide order dated 11.11.2015, allowed the appeal. The order of revision u/s 263 of the Act was set aside, as being bereft of jurisdiction and not satisfying the parameters of the statutory provision. The Department is in appeal against the aforesaid order of the Tribunal.

6. We have heard the submissions of Mr.J.Narayanasamy appearing for the Department and Mr.Sandeep Bagmar appearing for the assessee/respondent and perused the appeal as well as the supporting documents carefully.

7. The power conferred under section 263 of the Act can be exercised by the CIT only upon concurrent satisfaction of the twin statutory conditions contained in the provision. The section states thus:

263. Revision of orders prejudicial to revenue.-

(1) The Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment.

8. Thus, the order sought to be revised has to be both erroneous as well as prejudicial to the interests of the Revenue for the exercise of jurisdiction to be valid.

9. In the present case, the revision under section 263 is on the basis that the Assessing Officer ought not to have accepted the claims without examining each expense item wise thus committing an error as well as resulting in prejudice being caused to the revenue. The assessment order was thus set aside with a direction to verify the claims item wise again in the light of the material filed by the assessee. We note that the

CIT, in his conclusion, admits to the position that the assessee had filed details in support of the claims.

10. A perusal of the details brought on record at the time of assessment indicate that explanations as well as materials to substantiate the claim of the assessee were produced before the assessing officer. The claims form part of the return of income and are duly reflected in the accompanying financial statements. This has not escaped the attention of the assessing officer who raises a query calling for explanation as well as substantiation of the claims. The assessee has furnished an explanation as follows:

With reference to the above we submit that we have been asked to furnish information relating to the following:-

1. Renovation Expenses - Allowability
2. Deferred Revenue Expenditure - Allowability
3. Payment details of PF, ESI, VAT and Service Tax Etc.

In connection with this we submit as follows:-

1. Account copy of Renovation Expenses is enclosed. As can be seen from the renovation expenses, no new Asset is created. It is only a renewal and replacement of asset. All these expenses are revenue expenditure only. No New Asset is included in the above expenditure.

It is an allowable expense, since it is for the purpose of maintaining the standards and up-keep of assets.

We also submit that the renovation expenses are current repairs only. Ours is a hotel industry in the category of four star hotel. Unlike other industries we have to maintain and upgrade our assets to meet the standards of the day to day competition with others and to retain the clientele. The repairs and maintenance are also separately shown in the profit and loss account for the purpose of indication of regular maintenance. The expenses shown under the head renovation also represents to current repairs to maintenance of quality of assets. For the purpose of business, there is no distinction between the two and the bifurcation was made for

the purpose of administrative convenience for better control in maintaining the asset.

The renovation expenses are exactly the same of 'repairs & maintenance which are incurred wholly and exclusively for the purpose of maintaining the assets for running the business. It is the legitimate claim in accordance with the principles of accountancy and established commercial practice. Such expenditure must be taken into account to assess profit and gain in business.

It is the well settled law that Renovation expenses are to be treated as revenue expenditure unless new asset is created. The enclosed court decision clearly establish and support our above mentioned claim.

The case laws on this subject are:-

1. Commissioner of Income Tax vs Ooty Das-aprakash on 12th February 1998.
2. CIT v. Delhi Cloth & General Mills Co. Ltd. (1981) 131 ITR 641 (Delhi)
3. CIT v. Hede Consultancy (P) Ltd (2002) 258 ITR 380 (Bom)
4. C.R. Corera and Brotheres v Commissioner of Income-tax
5. Jagadisan and Srinivasan JJ
6. Senapathy Synams Insulations (P) Ltd v. CIT (2001 248 ITR.656 (Kar).

2. Deferred Revenue Expenditure:- This head of account represents the renovation/lease rentals expenses, while preparing the Profit & Loss a/c under Companies Act we have been following, a consistent method of accounting under which 1/3rd of renovation expenses are written off to Profit & Loss a/c every year and 2/3rd is carried forwarded to next years, which is transferred to deferred revenue expenditure to be debited to Profit and Loss a/c in the next 2 years. While for Income Tax Purposes we have been claiming 100% of expenses as Revenue Expenditure. This method of accounting and claim of expenses has been continuously followed for all these years, which has been accepted in our Income Tax Assessments.

11. Further, in response to query no:24 in questionnaire dated 05.03.12, the assessee has also produced books of accounts before the officer. The query as well as the response are extracted below:

Point.No.24. Produce the books of accounts, including stock book and bank book verification. Also please produce the pass book/bank statements issued by the bankers. Please produce vouchers towards expenses claimed for verification.

Books of accounts produced herewith for your reference.

12. The power under section 263 is a precise power that has to be exercised by the Commissioner only in appropriate cases where an error arises in the order of assessment that causes prejudice to the revenue. In the present case, the assessing officer, having noticed the claims, calls for material in support thereof. The decision to allow the claims is made after due verification by the officer and is a plausible view in law. In exercising power of revision u/s 263, the CIT essentially seeks to substitute his own conclusions upon the view taken by the assessing officer at the time of assessment. This is impermissible in the context of section 263. The Supreme Court, in the case of *Malabar Industrial Co Ltd vs CIT* (243 ITR 83) has settled the position that if the assessing officer has taken a view at the time of assessment based on materials, the CIT cannot seek to revise the view taken merely because he disagrees with it. This does not constitute an 'error' for the purposes of section 263.

13. The Bench, at page 88 states thus:

" The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of Revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income-Tax Officer adopted one of the courses permissible in law and it has resulted in loss of Revenue; or where two views are possible and the Income-Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the

interests of the Revenue, unless the view taken by the Income-Tax Officer is unsustainable in law."

14. The allowability of the claims of expenditure have been established by the assessee both on facts as well as by reliance upon various decisions of courts. Where two views are possible in relation to a matter, and the assessing officer has adopted one such view, the CIT cannot, by exercise of power u/s 263 impose the other view upon the assessing officer.

15. The Substantial Questions of law stand answered in favour of the assessee and against the Revenue. The Tax Case (appeal) is dismissed. No costs.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

msr/sl

To

1. The Registrar
Income Tax Appellate Tribunal
Madras C Bench
Rajaji Bhavan, Chennai.
2. The Principal Commissioner of Income Tax 6
121, M.G. Road, Nungambakkam, chennai 34.
3. The Assistant Commissioner of Income Tax
Company Circle VI(1)
Aayakar Bhavan
New Block(7th Floor)
121, Nungambakkam, Chennai 34.

+1 Cc to Ms.J.Narayanaswamy, Advocate sr 2729.
+1 CC to Ms. Sandeep Bagmal, Advocate sr 3305.

TAX CASE APPEAL No.839 of 2016

MP(CO)

sp(03/10/2017)